In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-848

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL., APPELLANTS

v.

LULA MAE MURRY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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DOCKET ENTRIES

No. 1412-72 in the United States District Court for the District of Columbia.

Date	Proceedings
1972	Deposit for cost by
July 17	Complaint, appearance 9 Affidavits. filed
July 17	Summons, copies (6) and copies (6) of Complaint issued #1, #2, #3 & #4 serv. 7-18.; Atty. Gen. Serv. 7-18 DA serv. 7-18.
July 17	Motion for a temporary restraining order.
July 17	Motion for Preliminary injunction: P & A's.
July 17	Motion for a class action order.
July 17	Application for three-judge court.
July 18	Order requesting the Chief Judge of the USCA to promptly convene A Three Judge District Court. (N) Gesell J.
July 19	Motion for Temporary Restraining Order heard & taken under advisement. Gesell J.
July 20	Affidavit of Edward J. Heckman.
July 20	Order setting hearing on motion for a preliminary injunction & Deft' proposed motion to dismiss before 3-Judge Court on 7-31-72 at 2:00 P.M.; Denying motion for TRO; Directing defts to file their motion to dismiss and supporting papers by noon on 7-28-72. (N) Gesell, J.
July 21	Designation of the Honorable Roger Robb, U.S.-C.A. and the Honorable George L. Hart, Jr. U.S.D.C. to serve with the Honorable Gerhard A. Gesell, U.S.D.C. as members of a three judge panel to hear and determine this case. (Notices sent by Miss Brown) Wright, Acting Chief Judge, U.S.C.A.
July 61	Motion for preliminary injunction & defendants motion to dismiss heard & taken under advisement. Robb J., Hart J., Gesell J.
July 31	Motion of defendants to dismiss or in the alternative for summary judgment; opposition to plaintiffs motion for a preliminary injunction; affidavit statement; P & A; c/m 7-31. M.C.

Date	Proceedings
1972	
July 31	Motion of plaintiffs for summary judgment; supplemental affidavit of Pearl R. Beavert; supplemental memorandum of law; appendix A and B; c/s 7-31. M.C.
Aug. 7	Supplemental memorandum of defendants in support of their motion to dismiss or in the alternative for summary judgment and in opposition to plaintiffs request for preliminary injunction; c/m 8-7.
Aug. 14	Per Curiam Memorandum and Final Order that the "tax dependent" amendment to the Food Stamp Act Violates the 5th Amendment and its further enforcement and implementation by defendants is permanently enjoined. (N) Robb, J., Hart, J., Gesell J.
Aug. 31	Supplemental memorandum of plaintiffs in support of motion for summary judgment; c/s 8-29.
Sep. 12	Notice of appeal by defts from order of 8-14-72 to the Supreme Court copy mailed to all counsel of record.
	No. 72-848 in the United States Supreme Court
1972	
Nov. 2	Order extending the time for Docketing the appeal.
Dec. 8	Jurisdictional Statement filed
1973	
Jan. 6	Motion to Affirm filed
Feb. 20	Order Noting Probable Jurisdiction

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed July 17, 1972]

LULA MAE MURRY (residing at 118 Tenth Street; Bessemer, Alabama); NANCY MARIE LEE (residing at 1712 Locust Street; Decatur, Alabama); VICTORIA ALDERETE (residing at 302 St. Louis Street; San Antonio, Texas); PEARL R. BEAVERT (residing at 2008 8th Avenue North; Seattle, Washington); JOE BEN VALDEZ and ISABEL VALDEZ (residing at 114 E. 6th Street; Pueblo, Colorado); ROBERT A. BRODERSON (residing at Rural Route 1, Box 306; Peahi, Maui, Hawaii); and LEONILA NEVAREZ (residing at 626 Briggs Avenue; San Antonio, Texas); for themselves, their households, and all other persons similarly situated,

PLAINTIFFS,

—VS.—

THE UNITED STATES DEPARTMENT OF AGRICULTURE; EARL L. BUTZ, individually and in his capacity as Secretary of the United States Department of Agriculture; EDWARD J. HEKMAN, individually and in his capacity as Administrator of the Agriculture Department's Food and Nutrition Service; JAMES KOCHER, individually and in his capacity as Food Stamp Division Director of the Agriculture Department's Food and Nutrition Service,

DEFENDANTS.

Civil Action No. .....

Complaint for Declaratory and Injunctive Relief

Application for Three-Judge Court

I. INTRODUCTION

1. This civil action for declaratory and injunctive relief is brought because the plaintiffs seek to enjoin implementation of the "tax dependent" provision in the Food Stamp Act [7 U.S.C. § 2014(b), as amended by P.L. 91-671 (Jan.

11, 1971) and the regulations promulgated thereunder [7 C.F.R. § 271.3(d), as published in 36 Fed. Reg. 14108 (July 29, 1971)]. Although plaintiffs are impoverished persons with insufficient resources to purchase a nutritionally adequate diet, they are denied Federal food stamps solely because of the "tax dependent" provisions in the Food Stamp Act and regulations. Those provisions deny food stamps to all needy persons and families who reside in households in which at least one member, 18 years of age or older, has been claimed as a "dependent" for Federal income tax purposes by a taxpayer who is not a member of a household eligible for food stamps. The former household is ineligible for food stamp participation during the tax period such dependency is claimed and for a period of one year after expiration of the tax period.

2. The Food Stamp Act [7 U.S.C. §§ 2011 *et seq.*] was passed by Congress in 1964, and amended in 1971 [P.L. 91-671], to provide direct relief against conditions of undernutrition and hunger existing throughout the country. The Act's Declaration of Policy sets forth the purposes of the Program:

> It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized cooperatively by the States, the Federal Government, local governmental units, and other agencies to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade. [7 U.S.C. § 2011]

3. The operation of the Food Stamp Program is fairly simple: a poverty-stricken household is charged a certain amount of money and in exchange receives food stamps of greater value. The difference between the value of the stamps received—the "coupon allotment"—and the cost of the stamps, is a bonus which provides recipients with a direct increase in food purchasing power. The stamps may be used to purchase domestic food, other than liquor and tobacco, at grocery stores certified by the Agriculture Department to sell food for stamps. Participation in the Program is limited to impoverished households [7 U.S.C. § 2014(a)] and such eligible households are entitled to sufficient stamps so that they can obtain a "nutritionally adequate diet." [7 U.S.C. §§ 2011 and 2016(a)]

4. Prior to the 1971 amendments to the Food Stamp Act, impoverished households were deemed eligible for food assistance solely on the basis that they had low income and few resources. The 1971 amendments to the Food Stamp Act, *inter alia,* deny health-vital food aid to *all members of a household*—regardless of how poor, hungry or malnourished they are—if one or more members of the household was declared a "tax dependent" by a person residing in another household if that other household is not receiving food stamps. The impoverished household containing the "tax dependent" is ineligible for food stamps during the period of the tax dependency and one year thereafter.

5. The tax dependency provision was apparently enacted by Congress in order to deny food stamp aid to persons, particularly college students, who supposedly had ready access to adequate income. But the effect of this overly-broad sweeping provision is to deny essential food relief to all members of an impoverished household in which a "tax dependent" resides even if:

(a) the taxpayer made a fraudulent tax dependency claim; or

(b) no support was actually given by the taxpayer to the "tax dependent"; or

(c) the taxpayer, while being ineligible for food assistance, is so poor that he cannot contribute a meaningful amount to the indigent "tax dependent"; or

(d) the taxpayer is presently unable or unwilling to contribute to the "tax dependent" and made a tax dependency claim for a period ending within the past year; or

(e) the taxpayer indicated to the Internal Revenue Service and the Food Stamp Office that he is not making a tax dependency declaration this year, but he made such a declaration in the previous year; or

(f) members of the household in which the "tax dependent" resides receive absolutely no benefit from the contributions by the taxpayer (either because the contributions are made specifically and solely to the "tax dependent"—such as child support or alimony payments—or because the contributions to the "tax dependent" are so small that they cannot be apportioned to other household members).

6. As a result of the amended statute and regulations, the plaintiffs—who are poor and otherwise eligible for food stamps, but who have been declared "dependents" during the present or prior year, or who live in a household containing such "dependents"—will be unable to participate in the Food Stamp Program. They, like many thousands of other indigents, will be excluded from health-vital food aid solely because they, or one or more of the people living with them, have been written off as a "tax dependent." The plaintiffs are poor and without access to nutritional adequacy, and are therefore much in need of food stamp assistance.

7. The tax dependency provisions in the statute and regulations are unconstitutional for the following reasons:

(a) they establish a conclusive and irrebutable presumption that plaintiffs and their households are neither poor nor in need of food assistance, thereby violating plaintiffs' rights to due process of law as guaranteed by the Fifth Amendment to the United States Constitution. Under the statute, plaintiffs have no right to adduce evidence that the tax dependency declaration was fraudulent; or that no support was actually provided by the taxpayer; or that the contribution given by the taxpayer was insubstantial; or that the taxpayer is presently unwilling or unable to contribute to the "tax dependent" (even though contributions were made previously); or that the taxpayer has informed the Internal Revenue Service and Food Stamp office that he will not make a tax dependency declaration this year; or that, as members of a household in which a "tax dependent" resides, they receive no contribution from the taxpayer (even though the "tax dependent" does). By

conclusively presuming, without permitting any rebuttal evidence, that "tax dependent" households have sufficient resources to purchase "a nutritionally adequate diet" [7 U.S.C. §§ 2011 and 2016(a)], thereby denying them health-vital food stamps, the statute and regulations violate plaintiffs' rights to due process of law;

(b) they violates plaintiffs' rights to equal protection since the statute and regulations create two different classes —(1) needy persons who reside in households that do not contain individuals, 18 years or older, who were claimed as "tax dependents" within the past year by a taxpayer ineligible for food stamps, and (2) needy persons who reside in households containing at least one member, 18 years or older, who was claimed as a "tax dependent" within the past year by a taxpayer ineligible for food stamps—and discriminate against the latter class in the provision of health-vital food aid without any rational justification therefor, thereby violating the Fifth Amendment to the United States Constitution; and

(c) they violate plaintiffs' rights to equal protection since the discriminatory deprivation of food assistance impinges upon three fundamental constitutional rights without there being a "compelling governmental interest" to justify said discrimination. Plaintiffs' fundamental rights that are impinged by the discriminatory deprivation of food assistance include:

(i) the right to due process (guaranteed by the Fifth Amendment), insofar as the statute wrongfully, but conclusively and irrebutably, presumes that plaintiffs have access to nutritional adequacy, thereby preventing plaintiffs from adducing facts to the contrary;

(ii) the right to freedom of association (guaranteed by the First and Ninth Amendments), insofar as the statute penalizes the plaintiffs—by taking away their food stamp entitlements—if they live with a "tax dependent," and insofar as it penalizes the plaintiffs if they live in any households other than the one in which the taxpayer resides; and

(iii) the right to travel and settle, because the statute penalizes the plaintiffs if they live in any household other than the one in which the taxpayer resides.

By impinging upon these fundamental rights without

there being a "compelling governmental interest" therefor, the discriminatory deprivation of food assistance violates the Fifth Amendment to the United States Constitution.

II. Jurisdiction

8. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1332, 1337, 1361; and 5 U.S.C. § 702 (the Administrative Procedure Act). The amount in controversy, exclusive of interest and costs, exceeds $10,000. A declaration of plaintiffs' rights is sought pursuant to 28 U.S.C. §§ 2201 and 2202.

III. Three-Judge Court

9. This is a proper case for determination by a three-judge Court pursuant to 28 U.S.C. §§ 2282 and 2284, since plaintiffs seek an injunction to restrain defendants, who are Federal officials, from the enforcement, operation and execution of a Federal statute and a Federal regulation on the grounds that said statute and regulation are contrary to the Constitution of the United States.

IV. Plaintiffs

10. All of the plaintiffs are poor and fall within the national income eligibility standards set by the Agriculture Department for Food Stamp Program participation. [See 37 Fed. Reg. 1159 (Jan 26, 1972)] The plaintiffs are from seven different cities in six states. They reside in: Bessemer and Decatur, Alabama; Seattle, Washington; Pueblo, Colorado; Waterloo, Iowa; Peahi, Maui, Hawaii; and San Antonio, Texas. Despite plaintiffs' vulnerable nutritional status, and although they were previously eligible for Federal food assistance, they have been denied food stamp eligibility solely because their households contain persons who have been claimed as "tax dependents" within the past year by taxpayers who are ineligible for food stamp assistance.

A. The MURRY Household

11. Plaintiff LULA MAE MURRY is 50 years old. She resides at 118 Tenth Street in Bessemer, Alabama with two of her sons, Jordan Murry (19 years old) and David Murry (15 years old), and her two grandchildren, Sammy Lee

Murry (18 years old) and Alfred James (8 years old). The four boys all attend school. Plaintiff's entire income consists of $15 every two weeks plus payment of her monthly rent ($25). These funds come from her ex-husband as court-ordered child support for her sons. Hence, plaintiff's present income is $57.50 per month. Plaintiff has applied for public assistance through the Alabama Pensions and Security Department and has received notification indicating that such aid will soon be provided.

12. Plaintiff MURRY's monthly expenses include the following recurring items: $18.50 for gas and electricity; $17 for doctor's visits and pills for her nervous condition; $2 for transportation to the doctor's office; and $3 for laundry. In addition, plaintiff MURRY has to pay for her (grand)children's school supplies, clothing, and hygienic needs (e.g. tooth paste, soap, shaving implements, etc.). But the largest expenditures that plaintiff MURRY makes are the food costs for herself and her four growing boys. For the past seven years, she has been dependent on food stamps to meet her household's nutritional needs. She has received $128 in food stamps at a cost of only $11—thereby receiving $117 in food benefits, a sum that is over 200 percent of her total monthly income. Food stamp assistance has been the only means by which plaintiff MURRY has been able to provide her household with food.

13. Since April, 1972, Plaintiff MURRY has been denied food stamp relief. She was informed by the Alabama Department of Pensions and Security that this aid was no longer available because of the "new tax dependency" provision in the Food Stamp Act. Plaintiff's ex-husband, Lazrous Murry, who is ineligible for food stamps, had claimed her two sons and her grandson, Sammy Lee, as "tax dependents" on his 1971 Income Tax Returns. Since plaintiff's oldest son Jordon is 19 years old, and grandson Sammy Lee is 18 years old, the "tax dependent" rule applies.

14. Plaintiff MURRY has been divorced from Lazrous Murry for almost eleven years. Mr. Murry is 55 years old. He has not shared the same household with the plaintiff and her sons since their divorce. Mr. Murry has remarried and now lives with, and supports, his second wife and her two children, whom he has adopted. They reside in Bessemer, Alabama. Mr. Murry is employed by the Tennessee

Coal Iron and Railroad Company. Plaintiff MURRY does not know how much her husband earns monthly. The only support she receives from him is the aforementioned court-ordered child support of $15 every two weeks and payment of her monthly rent ($25).

15. Plaintiff MURRY currently has no means available to replace the vital food assistance she received through the Food Stamp Program. Her alternatives are unconscionably cruel: she must either force her oldest son and grandson to leave the home, or she must do without sufficient nourishment for herself and her children. Since she has kept her (grand)children together and continues to provide them with parental care and support, she has been denied food stamps for the first time in seven years, thereby leaving plaintiff MURRY's family undernourished and hungry.

B. The LEE Household

16. Plaintiff NANCY MARIE LEE is 39 years old. She resides at 1712 Locust Street in Decatur, Alabama with her five children: James Whitener (20 years old); Ricky Joe Whitener (18 years old); Trease Fay Whitener (17 years old); Cynthia Ann Lee (12 years old); and Charles Lee (10 years old). The entire monthly income for the household is $23 which plaintiff LEE receives for one of her children from the Alabama Pension and Security Department's Aid to Dependent Children Program. Plaintiff LEE has applied for additional funds and expects to receive modest monthly supplements in the near future. Plaintiff's monthly household expenditures total $249, including: $148 for food; $13 for rent; $8 for electricity and utilities; $20 for clothing; $20 for medicine; $15 for transportation; and $25 for personal incidentals, household goods and hygienic items.

17. Because of her desperate financial situation, plaintiff LEE has been unable to provide her large family with even a minimal food diet. Should her monthly public assistance payments increase as anticipated, she still could only afford a small fraction of her family's nutritional needs. To remedy this situation, plaintiff LEE applied for food stamp assistance. Based on her family's income, even after she receives the modest increase in public assistance, she is eligible for $148 worth of stamps at a cost of $14, thereby providing $134 each month in important food benefits.

However, plaintiff LEE was denied food stamps solely because her husband had claimed her two oldest sons as "tax dependents" in his 1971 tax returns. Thus, because of the "tax dependent" rule, plaintiff LEE's household has been denied food stamps.

18. Plaintiff LEE's husband, Charles S. Lee, is not a member of her household. He deserted his family several months ago. Since the time of his desertion, he has not provided his family with support. Plaintiff LEE is unaware of her husband's whereabouts and has no information as to whether or not he is employed. However, due to her husband's tax dependency claim in his 1971 tax returns, plaintiff LEE is left with the following dilemma: she can either force her oldest sons to leave the home, or she must do without adequate and sufficient nourishment for herself and her five children. She has rejected the first alternative partially because her oldest son suffers from mental retardation (and has spent substantial time in the Alabama Mental Institution in Tuscaloosa), and because her second oldest son needs constant attention since he has already had juvenile delinquency problems. Plaintiff LEE, therefore, decided not to force these boys away from their home and family. Consequently, the LEE household must suffer severe deprivation, hunger and undernutrition.

C. The ALDERETE Household

19. Plaintiff VICTORIA ALDERETE is 43 years of age and resides at 302 St. Louis Street in San Antonio, Texas, with her five children. Plaintiff ALDERETE has been divorced from her husband, Juan Alderete since January, 1968. Plaintiff's current monthly income totals $205 of which $105 is derived from child support payments and $100 is received as public assistance (Aid to Families with Dependent Children). Plaintiff's monthly household expenses include: $73 for house payments, $71 for food, $17 for utilities, $4 for school costs, $13 for clothing, $18 for laundry expenses, and $9 for hygenic items and recreational needs. Thus, plaintiff's household expenses total $205 monthly.

20. Plaintiff ALDERETE's household budget is a stringent one. However, in the past she was able to meet her family's needs because food stamps allowed her to keep her food expenses to a minimum. Plaintiff was able to

purchase $144 worth of food stamps monthly at a cost of $46, thereby receiving $98 in food aid, a sum equivalent to almost 50% of plaintiff's entire monthly income. With an additional expenditure of $25 each month to supplement her monthly food stamp purchases, plaintiff was able to feed her family. However, plaintiff has been informed by the Texas Department of Public Welfare that her household could no longer receive food stamp relief because her ex-husband, Juan Alderete, had claimed their children as dependents for Federal income tax purposes. Since plaintiff's oldest child, George, is eighteen years old, the ALDERETE household was subject to the tax dependency provision.

21. Plaintiff ALDERETE appealed this decision of the Texas Public Welfare Department at a fair hearing proceeding. In early July, she was informed that this denial of food stamps was upheld by the hearing officer because of the tax dependency provision. Plaintiff's household is, therefore, unable to receive food stamps because her ex-husband, who provides her household with only partial support, claimed her oldest son as a "tax dependent" in his 1971 Income Tax returns. Plaintiff can receive stamps once more, only if she is willing to force her oldest son to leave his family and home. However, plaintiff's family is closely knit. She will not drive her son from his brothers and sisters. Consequently, she is forced to deny her five children an adequately nutritious diet, thereby risking severe harm to the family's health and the children's development.

D. The BEAVERT Household

22. Plaintiff PEARL R. BEAVERT is the mother of two teenage children who reside with her at 2008 8th Avenue North in Seattle, Washington. Plaintiff BEAVERT is divorced. The total monthly income of the BEAVERT household is $224, which is derived entirely from the Aid to Dependent Children Program. The total recurring monthly expenditures for the household are $296, including: $102 in house payments; $69 in utilities; and $125 for food and household necessities. In addition to these expenses, plaintiff BEAVERT must spend money for transportation, clothing and toiletries.

23. Previously, the BEAVERT household received food stamp relief which it needed, and currently needs, for substantial nourishment. The household received $88 in monthly food stamps at a cost of $58, thereby obtaining a $30 benefit. On May 26, 1972, plaintiff BEAVERT was notified that her household's food stamp benefits would be terminated because her 18 year old daughter Crystal was claimed as a "tax dependent" by Crystal's father in his 1971 Federal income tax returns. Although the family receives no support from Crystal's father, the BEAVERT household has been denied food stamp relief solely because of the 1971 tax dependency claim. Since plaintiff BEAVERT feels morally bound to support and care for her daughter, and since Crystal is going to high school, plaintiff BEAVERT has not forced Crystal to leave her family and home. As a result, the entire household is denied Federal food stamp aid that they vitally need for obtaining nutritional adequacy.

E. The VALDEZ Household

24. Plaintiffs JOE BEN VALDEZ and ISABEL VALDEZ are both 18 years of age. They and their one month old child reside in Pueblo, Colorado. The household's total monthly income is $224 derived from public assistance benefits ($194) and payments from the Work Incentive Training Program ($30). The recurring monthly expenses are $237, including: $80 for rent; $4 for electricity; $82 for food; $10 for clothing; $8 for insurance; $45 for transportation (gas and automobile repairs); $6 for educational expenses; and $2 for recreation. These expenses have increased during the past weeks and will continue to increase due to the needs of plaintiffs' child.

25. Plaintiff JOE BEN VALDEZ applied for food stamp relief so that he could provide his household with a proper diet. Plaintiff's application was rejected because his father, Ben G. Valdez had claimed him as a "dependent" in the 1971 income tax returns. Plaintiffs JOE BEN VALDEZ and ISABEL VALDEZ, however, have not received any support from Ben G. Valdez in 1972, and they will not be receiving any support in the future. This is because Ben G. Valdez is very much in debt and his impoverished circum-

stances leaves him with insufficient funds for providing support to the plaintiffs.

26. Ben G. Valdez is 54 years old and resides in Pueblo, Colorado with his wife Rose Valdez (53 years of age), their two daughters—Nancy Martinez (21 years of age) and Joan Valdez (15 years of age)—and their son Daniel Valdez (17 years of age). Mr. Valdez earns $450 per month as an employee for the Colorado Fuel and Iron Corporation. Out of this income, Ben Valdez pays $497 in expenses, including: $180 for food; $39.50 for utilities; $20 for clothing; $23.88 for (life, automobile and fire) insurance; $22 for transportation; $20 for educational expenses; $3 for recreation; and $189 in monthly payments for debts incurred (which are cumulatively in the amount of $5,250).

27. Because of Ben G. Valdez's prohibitively high household expenses, he is unable to provide the plaintiffs with any support. Since Ben G. Valdez is barely able to support his wife and three children, and since Mr. Valdez has irregular additional expenses due to his ulcers and diabetes condition, plaintiffs JOE BEN VALDEZ and ISABEL VALDEZ receive no money from him. But, since Ben G. Valdez claimed plaintiff JOE BEN VALDEZ as a "tax dependent" in 1971, the plaintiffs are disqualified from food stamp relief. This has had, and will continue to have, a very adverse effect on plaintiffs' household, particularly the infant child who has insufficient food for the nourishment necessary to grow and develop healthfully.

F. The BRODERSON Household

28. Plaintiff ROBERT A. BRODERSON is 18 years of age. He and his wife, Beverly Broderson (16 years of age), reside at 309 East Ninth Street in Waterloo, Iowa. Plaintiff BRODERSON recently obtained a job at a service station which will provide the household with $110 in monthly income—the only income that the household receives. Out of this, plaintiff BRODERSON must pay $75 monthly for rent; additional expenditures, for other necessities, must also be paid. Since plaintiff BRODERSON's wife is pregnant and expects a child around July 10, 1972, substantial additional expenditures will have to be made by the household.

29. On or about March 8, 1972, plaintiff BRODERSON and his wife applied for food stamps. Despite the house-

hold's impoverished status the food stamp application was denied solely because plaintiff BRODERSON had been claimed as a "dependent" for income tax purposes by his parents for tax year 1971. Plaintiff BRODERSON and his wife were married on December 26, 1971 and resided as husband and wife with his parents from that time until February, 1972, at which time they established their own residence. Although plaintiff's parents provided ROBERT A. BRODERSON with support in 1971, this support has been terminated and plaintiff's parents understand that they cannot declare him as a "dependent" for tax year 1972.

30. The tax dependency provision in the Food Stamp Act leaves plaintiff BRODERSON with a tragic dilemma: either separate from and leave his pregnant wife (so that she and the new baby can receive food stamps); or stay with his wife and baby and be denied food stamps and, consequently, adequate nourishment. Either alternative will cause irreparable injury to the health and well-being of the BRODERSON household.

G. The SCHULTZ Household

31. Plaintiff KRISTI SCHULTZ is 19 years of age. She presently resides with a girlfriend and the latter's two children in Peahi, Maui, Hawaii. Plaintiff SCHULTZ has no income at all and is totally dependent on her roommate for food and shelter.

32. In August, 1971, plaintiff SCHULTZ started to receive food stamps. She received $27.50 in monthly food stamp benefits—she paid 50 cents and received $28 in food stamps. In November, 1971, however, her food stamp benefits were terminated because her parents intended to declare her as a "dependent" for 1971 tax purposes, despite the parents' refusal to provide plaintiff SCHULTZ with any support after June, 1971.

33. Plaintiff SCHULTZ was subsequently informed by food stamp officials in Hawaii that, if she got married, she would receive food stamps again. Partially as a result of this advice, plaintiff SCHULTZ and her fiance got married on January 19, 1972. Almost immediately thereafter, she and her husband applied for food stamp relief but were denied such assistance because plaintiff's parents had declared her a "tax dependent" in the previous year.

34. Due to this denial of food stamp relief, plaintiff SCHULTZ has been unable to purchase food. Her parents did not provide her with any support, despite plaintiff SCHULTZ's very desparate financial condition. Consequently, for a period of approximately four months, plaintiff was forced to live on whatever food she could find growing near her residence. Her diet consisted exclusively of sweet potatoes and water. As a result of this insufficient diet, plaintiff became seriously malnourished and subsequently became ill for a period of approximately four months. Additionally, the emotional and physical strain resulting from this deprivation was a major cause in her divorce from her husband in May, 1972.

35. Plaintiff SCHULTZ is presently without any funds. She receives no support from her parents and will not be claimed by them as a "dependent" for 1972 income tax purposes. Her sustenance is solely dependent on the charitable nature of her girlfriend who is, unfortunately, also indigent. Plaintiff SCHULTZ nonetheless is denied food stamp relief because her parents claimed her as a "dependent" in 1971, despite the refusal of her parents to provide support to the plaintiff for over one year.

H. The NEVAREZ Household

36. Plaintiff LEONILA NEVAREZ is 38 years of age and is the mother of five children: Larry (18 years old), Alma (17 years old), Marina (15 years old), Rocky (4 years old), and Joseph (10 months old). Plaintiff and her children reside at 626 Briggs Avenue in San Antonio, Texas. Plaintiff's monthly household income totals $215, derived entirely from the combined earnings of the two oldest children. Plaintiff's monthly household expenses include: $60 for rent; $41 for food; $19.50 for utilities; $7.50 for telephone bills; $22 for transportation; $2.50 for school costs; $4 for medicine and drugs; $15 for clothing; $3.75 for hygienic items and recreational expenses; and $30 for appliance and furniture payments.

37. Plaintiff NEVAREZ has great difficulty in supporting herself and her children on this meager income. Previously, she received substantial assistance through the Food Stamp Program. She received $144 a month in food stamps at a cost of $21—a benefit of $123, more than 50 percent of plaintiff's total monthly household income.

38. Recently plaintiff was denied further food stamp relief because food stamp administrators in her State thought that plaintiff's estranged husband, Raymond Nevarez, had claimed the children as tax dependents in 1971. If this were true, plaintiff's household would not be eligible for food stamps since the eldest son Larry is currently 18 years of age. Plaintiff's husband deserted the family several months ago and plaintiff NEVAREZ does not know his whereabouts. He has not provided any support to the family and plaintiff NEVAREZ believes that he has not even filed a tax return since 1968.

39. Since plaintiff NEVAREZ cannot prove that her husband in 1971 did not file a tax return claiming their children as "tax dependents," the NEVAREZ household has been denied food stamp aid. Plaintiff NEVAREZ, therefore, faces the problem of deciding whether she should ask her eldest son Larry to leave the home since he is the only child who can disqualify the household from food stamp assistance under the tax dependency provision. But, if Larry left the household, most of the household's income would also be lost since he earns most of the money that the family receives. As a result of the tax dependency provision, therefore, the NEVAREZ household faces an unsoluble dilemma in which either solution leaves the family hungry and improperly nourished.

V. Plaintiffs Bring This Suit As a Class Action

40. Plaintiffs are all impoverished persons who need food stamps for their nutritional well-being, but who are denied health-vital food relief solely because they live in households containing "tax dependent" members. Many thousands of needy persons throughout the country are similarly aggrieved by the "tax dependent" provision of the Food Stamp Act and the regulation promulgated thereunder. Subsequently, plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, in their own behalf, in behalf of their households, and in behalf of indigents throughout the country who are similarly aggrieved by the defendants' unconstitutional denial of food stamps. The questions of fact and law are common to the plaintiffs and the class they represent and the members of the class are so numerous as to make joinder of parties impracticable. The claims of the plaintiffs are typical of

the claims of all members of their class, and the plaintiffs will fairly and adequately represent the claims of all members of the class. The defendants have acted or refuse to act on grounds generally applicable to the entire class.

VI. The Defendants

41. Defendant EARL L. BUTZ is the Secretary of the United States Department of Agriculture. Defendant EDWARD J. HEKMAN is the Administrator of the Agriculture Department's Food and Nutrition Service. Defendant JAMES KOCHER is the Food Stamp Division Director of the Agriculture Department's Food and Nutrition Service. Since the Food Stamp Division of the Agriculture Department's Food and Nutrition Service is the agency responsible for administering the nationwide Food Stamp Program, the defendants are fully responsible for implementing the unconstitutional statutory and regulatory provisions challenged herein.

VII. Causes of Action

42. The Food Stamp Program was established by Congress in 1964 to alleviate hunger and malnutrition among low-income groups. The Program was designed to provide all needy households with sufficient food stamps so that they can obtain a "nutritionally adequate diet through normal channels of trade." [7 U.S.C. § 2011] For poor people throughout the country, the Food Stamp Program can provide the difference between undernutrition and nutritional adequacy. The Program was designed to make sure that hunger and malnutrition would be eradicated throughout the country, in every needy household. [7 U.S.C. §§ 2011 and 2014(a)]

43. Prior to the 1971 amendments to the Food Stamp Act [P.L. 91-671 (Jan. 11, 1971)], determinations concerning the need and consequent eligibility to receive food relief was based exclusively on the income and resources of applicant households. The 1971 amendments to the Act, however, *inter alia*, added another basis for determining households' need to receive food stamp aid. As part of an amendment to section 5(b) of the Act [7 U.S.C. § 2014(b)], the new legislation states:

> . . . . Any household which includes a member who has reached his eighteenth birthday and who is claimed as a

> dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this Act during the tax period such dependency is claimed and for a period of one year after expiration of such tax period . . . . [7 U.S.C. § 2014(b)]

44. On July 29, 1971, the defendants promulgated regulations pursuant to the Food Stamp Act amendments. With regard to the tax dependency provision, the regulations stated:

> Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for Federal income purposes by a member of a household which is not certified as being eligible for food assistance shall be ineligible to participate in the program during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. [7 C.F.R. § 271.3(d), as contained in 36 Fed. Reg. 14108 (July 29, 1971)]

The statutory and regulatory provisions were implemented between January and May, 1972, depending upon the State.

45. Paragraphs 10 to 39 are reiterated and incorporated herein.

A. Plaintiffs' Rights to Due Process of Law

46. Although there is scant legislative history on the tax dependency provision, it seems clear that Congress enacted this provision in order to prevent non-needy households—those households with actual access to sufficient funds for adequate nutrition—from receiving food stamp aid. Congress wished to assure that all needy, but only needy, households would be eligible for food stamp relief. [7 U.S.C. § 2014(a)]

47. All of the plaintiffs herein, and many thousands of persons similarly situated, reside in impoverished households whose members are in dire need of Federal food relief. Since plaintiffs, or members of their households, have been declared "tax dependents" during the prior or present tax year by taxpayers who are ineligible for food stamps, plaintiffs' households have been conclusively presumed not to be poor and in need of food relief. For each

of the plaintiffs herein and thousands of persons similarly situated, this presumption is conclusive, irrebutable and erroneous.

48. Plaintiff LULA MAE MURRY's five-person household is conclusively deemed non-needy—even though the household's monthly income is a meager $57.50—just because plaintiff MURRY's former husband had declared two of her children as "tax dependents" in 1971. Despite her household's extreme indigency, plaintiff MURRY is prevented from adducing any evidence—during the application process and at any subsequent hearing challenging the denial of health-vital food aid—that the conclusive determination, of her household's non-needy status, is erroneous.

49. Plaintiff NANCY MARIE LEE's six-person household is conclusively deemed non-needy—even though the household's entire monthly income is $23 and its recurring monthly expenses are $249—just because plaintiff LEE's estranged husband had claimed her and two of her children as "tax dependents" in 1971. Although Mr. Lee's whereabouts are unknown and he does not contribute anything to his former household, and although the LEE household is virtually penniless, plaintiff LEE is prevented from adducing any evidence—during the application process and at any subsequent hearing challenging the denial of health-vital food aid—that the conclusive determination, of her household's non-needy status, is erroneous.

50. Plaintiff VICTORIA ALDERETE's six-person household is conclusively deemed non-needy even though the household's entire monthly income is $205 and its recurring monthly expenses total at least to that sum. Her household is conclusively and irrebutably deemed non-needy solely because her oldest child's father claimed the child as a "tax dependent" in 1971. Although the father contributes only partially to the household's expenses and although the ALDERETE household is extremely poor, plaintiff ALDERETE is prevented from adducing any evidence—during the application process and at any subsequent hearing challenging the denial of health-vital food aid—that the conclusive determination of her household's non-needy status, is erroneous.

51. Plaintiff PEARL R. BEAVERT's three-person household is conclusively deemed non-needy—even though

the household's monthly income is only $224 and the recurring monthly expenditures for necessities are $296—solely because plaintiff's 18 year old daughter was claimed as a "tax dependent" in 1971 by the plaintiff's estranged husband. Although plaintiff's husband provides absolutely no support to the BEAVERT household, and although the BEAVERT household is impoverished, no one in the household is permitted to adduce any evidence—neither during the application process nor at any subsequent hearing challenging the denial of food stamp aid—that the conclusive determination, of the household's non-needy status, is erroneous.

52. The three-person household of plaintiff JOE BEN VALDEZ and ISABEL VALDEZ is conclusively deemed non-needy—even though the household's welfare allotment of $224 is exceeded by its recurring monthly expenditures of $237 for necessities—solely because JOE BEN VALDEZ's father claimed the plaintiff as a "tax dependent" in 1971. Although plaintiff JOE BEN VALDEZ's father provides no support to the plaintiff's household (since the father is very poor and is heavily in debt) and although the plaintiffs are poor, the plaintiffs are not permitted to adduce any evidence—neither during the application process nor at any subsequent hearing challenging the denial of food stamp aid—that the conclusive determination, of the household's non-needy status, is erroneous.

53. Plaintiff ROBERT A. BRODERSON's two-person household (that will soon become a three-person household when plaintiff's child is born in July, 1972) is conclusively deemed non-needy—even though the household's total monthly income is a meager $110—because plaintiff BRODERSON's parents claimed him as a "tax dependent" in 1971. Although plaintiff BRODERSON receives no support from his parents, and although the BRODERSON household is very poor, the plaintiff is prevented from adducing any evidence—during the application process and at any subsequent hearing challenging the denial of food stamp aid—that the conclusive determination, of the household's non-needy status, is erroneous.

54. Plaintiff KRISTI SCHULTZ is conclusively deemed non-needy—even though she has no income whatsoever and has been severely ill due to malnutrition—solely because

her parents claimed her as a "tax dependent" in 1971. Although plaintiff SCHULTZ has received no support from her parents for over a year, and although plaintiff SCHULTZ is absolutely penniless, she is not permitted to adduce any evidence—neither during the application process nor at any subsequent hearing challenging the denial of food stamp aid—that the conclusive determination, of her non-needy status, is erroneous.

55. Plaintiff LEONILA NEVAREZ's six-person household is conclusively deemed non-needy—even though the household receives only $215 in monthly income—solely because plaintiff's estranged husband is deemed to have claimed their children as "tax dependents." Although Mr. Nevarez's whereabouts are unknown and he provides no support to the household, and despite the household's impoverished status, plaintiff NEVAREZ is prevented from adducing any evidence—during the application process and at any subsequent hearing challenging the denial of food stamp aid—that the conclusive determination, of the household's non-needy status, is erroneous.

56. As a result of these erroneous conclusive presumptions, which altogether remove all health-vital food relief from the indigent plaintiffs, said plaintiffs are left without sufficient resources to obtain a nutritionally adequate diet. By conclusively, irrebutably and erroneously presuming that plaintiffs are not poor, thereby denying them much-needed food aid, the tax dependency provisions in the Food Stamp Act and regulations are violative of the Fifth Amendment's due process guarantees.

B. Plaintiffs' Rights to Equal Protection

57. The tax dependency provisions in the Food Stamp Act and regulations create two different classes: the first class is composed of needy persons who reside in households that do not contain individuals, 18 years or older, who were claimed as "tax dependents" within the past year by a taxpayer ineligible for food stamps; and the second class is similarly composed of needy persons but who reside in households containing at least one member, 18 years or older, who was claimed as a "tax dependent" within the past year by a taxpayer ineligible for food stamps.

58. All of the plaintiffs, as members of the latter class, are denied health-vital food aid while persons in the former

class are eligible for food stamp assistance. Such denials, to plaintiffs and all other persons in the latter class, despite their desparate need for food stamp assistance, constitutes an arbitrary and capricious discrimination that is not rationally related to the purposes of the Food Stamp Act. [See 7 U.S.C. § 2011 and 2014(a).] As such, the tax dependency provisions are violative of the Fifth Amendment's guarantee of equal protection.

59. The discriminatory deprivation of Federal food assistance, due to the tax dependency provisions, also impinge upon fundamental constitutional rights without there being a "compelling governmental interest" therefor. The fundamental constitutional rights that are impinged upon by the discriminatory denials of food stamps include:

i. *Due Process of Law*

60. The right to due process of law (guaranteed by the Fifth Amendment), insofar as the tax dependency provisions wrongfully, but conclusively and irrebutably, presume that plaintiffs are non-needy and have access to nutritional adequacy, thereby preventing plaintiffs from adducing facts to the contrary. [See paragraphs 46 to 56.]

ii. *Freedom of Association and Privacy*

61. Plaintiffs' rights to freedom of association and privacy (guaranteed by the First and Ninth Amendments) are also impinged insofar as they must either break up their households—separating from their spouses, children and loved ones—or be denied much-needed food relief. Since the tax dependency provisions *eliminate all persons in a household* from food stamp relief if a "tax dependent" resides in said household, the "tax dependent" must be ousted from the home if the other household members are to receive food relief.

62. If plaintiff LULA MAE MURRY is to receive health-vital food stamp assistance for herself and part of her household, she must oust her son Jordan Murry and her grandson Sammy Lee Murry from her house (since both of them were declared as "tax dependents" and are at least 18 years of age). By separating Jordan Murry and Sammy Lee Murry from their younger brothers and herself, plaintiff MURRY and the rest of her household become eligible for food stamp relief.

63. If plaintiff NANCY MARIE LEE is to receive health-vital food assistance for herself and part of her household, she must oust her sons James Whitener, who is mentally retarded and requires constant supervision, and Ricky Joe Whitener, who has had juvenile delinquency problems and also needs parental care and attention, from her house. By separating James Whitener and Ricky Joe Whitener from their younger sisters and brother, and from herself as well, plaintiff LEE and the rest of her household become eligible for food stamp relief.

64. If plaintiff VICTORIA ALDERETE is to receive health-vital food stamp assistance for herself and part of her household, she must oust her son George from her household (because George is 18 years old and was declared as a "tax dependent" in 1971). By separating George from his sisters and brothers and herself, plaintiff ALDERETE and her other children are eligible for food stamp relief.

65. If plaintiff PEARL R. BEAVERT is to receive health-vital food stamp assistance for herself and part of her household, she must oust her 18 year old daughter, Crystal Beavert, from her house (since she was declared a "tax dependent" in 1971). By separating Crystal Beavert from her brother and herself (which would prevent Crystal from completing her high school education), plaintiff BEAVERT and her son would become eligible for food relief.

66. If plaintiff ISABEL VALDEZ is to receive health-vital food stamp assistance for herself and her one month old child, she must separate from her husband, plaintiff JOE BEN VALDEZ, since he was declared a "tax dependent" in 1971 by his impoverished father. By separating from her husband, thereby shattering the marital relationship and depriving the infant of paternal support and care, plaintiff ISABEL VALDEZ and her child would become eligible for food stamp relief.

67. If Beverly Broderson is to receive health-vital food stamp assistance for herself and her expected child, she must separate from her husband, plaintiff ROBERT A. BRODERSON, since he was declared a "tax dependent" in 1971 by his parents. By separating from her husband, thereby shattering the marital relationship and depriving the expected infant of paternal support and care, Beverly Broderson and her expected child would become eligible for food stamp relief.

68. Plaintiff KRISTI SCHULTZ, who was declared a "tax dependent" by her parents in 1971, has divorced her husband, thereby allowing her husband to become eligible for food stamp assistance.

69. If plaintiff LEONILA NEVAREZ is to receive health-vital food stamp assistance for herself and part of her household, she must oust her son Larry Nevarez—who is the household's major source of income—from her house. By separating Larry Nevarez from his brothers and sisters, and herself as well, plaintiff NEVAREZ and the rest of her household become eligible for food stamp relief.

70. All of the plaintiffs' rights to food assistance, therefore, are conditioned on their giving up their constitutional right to associate—with their spouses, children and/or loved ones—in the confines of their home. Consequently, the tax dependency provisions very severely and tragically impinge upon plaintiffs' freedom of association and privacy.

iii. *Right to Travel and Settle*

71. Plaintiffs' rights to travel and settle (that, as held by the Supreme Court, are fundamental to the Constitution), are also impinged insofar as plaintiffs are penalized if they leave their parents' homes. Plaintiffs JOE BEN VALDEZ, ISABEL VALDEZ, ROBERT A. BRODERSON, and KRISTI SCHULTZ—who have recently gotten married—have been denied health-vital food aid because they moved from their parents' homes and were declared "tax dependents" by their parents during the past tax year. They are, therefore, penalized—by losing their food stamp relief—because they moved and settled away from their parents; they would have received such food aid if they stayed in their parents' homes. Consequently, the tax dependency provisions very harmfully impinge upon plaintiffs' rights to travel and settle.

72. Plaintiffs' rights to due process, to travel and settle, and their freedom of association and privacy, are severely impinged upon by the discriminatory deprivation of food assistance resulting from the tax dependency provisions. There is no "compelling governmental interest" that is advanced by the discriminatory deprivation of relief and, consequently, the tax dependency provisions violate the Fifth Amendment's guarantee of equal protection.

VIII. The Harm to Plaintiffs and Their Class

73. Plaintiffs' impoverished circumstances have left them unable to obtain a nutritionally adequate diet. They and their households are in dire need of food assistance. If plaintiffs and their class do not receive food stamp aid, they and their households will continue to be subjected to the irreparable injuries resulting from hunger, undernutrition, and consequent ill health.

IX. Prayer for Relief

74. Plaintiffs, and all others similarly situated, are suffering, and will continue to suffer, grievous injury as a result of the tax dependency provisions in the Food Stamp Act and regulations. They seek relief from these unconstitutional provisions. No previous application for the relief sought herein has been made to this or any other Court. No adequate remedy at law is available to the plaintiffs.

WHEREFORE, plaintiffs, on behalf of themselves, their households and all others similarly situated, pray that this Court:

(a). Assume jurisdiction in this case;

(b). Convene a three-judge court, pursuant to 28 U.S.C. §§ 2282 and 2284, and set this case down for a prompt hearing and determination of this controversy;

(c). Order, pursuant to Rules 23(b)(2) and 23(c)(1) of the Federal Rules of Civil Procedure, that this action shall be maintained as a class action in behalf of all impoverished households in the country who are similarly aggrieved by the tax dependency provisions of the Food Stamp Act and regulations;

(d). Declare that the tax dependency provisions of the Food Stamp Act and regulations violate plaintiffs' rights to due process of law as guaranteed by the Fifth Amendment to the United States Constitution;

(e). Declare that the tax dependency provisions of the Food Stamp Act and regulations violate plaintiffs' rights to equal protection of law as guaranteed by the Fifth Amendment to the United States Constitution;

(f). Preliminarily and permanently enjoin the defendants—their agents, employees, successors in office, and those that work in concert with them—from denying food stamp eligibility to the plaintiffs, and all other persons similarly

situated, on the basis that plaintiffs, or members of their households, have been declared "dependents" by Federal taxpayers who are, themselves, ineligible for food stamps; and

(g). Provide such further relief as this Court may deem proper or just.

Respectfully submitted,

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Policy and Law
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[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT OF LULA MAE MURRY

STATE OF ALABAMA
COUNTY OF JEFFERSON } ss

Lula Mae Murry, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 50 years old and reside at 118 Tenth Street in Bessemer, Alabama.

2. My household consists of myself, my sons Jordan Murry, 19 years old, and David Murry, 15 years old, and my grandsons Sammy Lee Murry, 18 years old and Alfred James, 8 years old. My sons and grandsons all attend school.

3. Our household income is $15 every two weeks which I receive from my ex-husband as court-ordered child support for my sons. My ex-husband also pays our household rent which totals $25 per month. Our household income, therefore, totals approximately $57.50 a month. I have applied for assistance through the Alabama Pensions and Security Department's Aid to Dependent Children program and received notification that this aid will be forthcoming at the end of this month. I do not know, as yet, what this financial assistance will total.

4. My household's monthly expenses include the following items:

Gas	$ 8.50
Electricity	10.00
Medical costs (monthly visit to (doctor and pills for nerves)	17.00
Transportation (to Doctor's office)	2.00
Laundry	3.00
	$40.50

5. In addition to the expenses itemized above, I must spend a great deal of money for food. For the past 7 or 8 years I have been using food stamps to meet this expense. I have been able to purchase $128 worth of food stamp coupons at a cost of $11, thereby saving $117 in food costs each month—a sum equal to 200% of my household's total

monthly income. Food stamps have been the only way that I have been able to feed the four growing boys in my household.

6. Since April, 1972, I have been denied this vital food stamp aid. I was informed at the end of March, 1972, that this aid would no longer be available to me because by ex-husband, Lazrous Murry had claimed my two sons and my grandson, Sammy Lee Murry, as dependents on his 1971 Income Tax Returns. Since that date I have been unable to provide my household with adequate food, and will not be able to do so without food stamp aid.

7. My ex-husband, Lazrous Murry, is 55 years old. We were divorced about eleven years ago. Lazrous Murry has not shared the same household with me or his children since. He has remarried and now lives with his second wife and her two children (whom he has adopted) in Bessemer, Alabama. To the best of my knowledge, he supports his wife and adopted children and claims them as dependents for tax purposes. He is employed by the Tennessee Coal, Iron and Railroad Company. I do not know how much money he earns. The only support my household receives from him is the aforementioned court-ordered child support of $15 every two weeks and court-ordered monthly rent payments.

8. I have no way to replace the food savings that my household received from food stamps. Even if I were to stop seeing my doctor each month, cease using basic household utilities, default on my rent and save our laundry funds, I could not amass enough funds each month to buy food for my household. My only alternative is to force my oldest son and oldest grandson to leave their home, since they were both claimed as dependents by my ex-husband and are 19 years and 18 years of age respectively. However, these boys are in school and would be without sufficient funds with which to live on. I can not throw them out of their own home. Instead, we will have to go without the proper nutrition that we have received over the past years through food stamp aid. We will, consequently, suffer the harm that inevitably results from hunger and malnutrition.

/s/ Lula Mae Murry
LULA MAE MURRY

Subscribed and sworn to before
me this 6th day of June,
1972 by Lula Mae Murry

Helen Cooley
NOTARY PUBLIC

My Commission expires
March 13, 1976

[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT OF NANCY MARIE LEE

STATE OF ALABAMA }
COUNTY OF MORGAN } ss.

NANCY MARIE LEE, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 39 years old and reside at 1712 Locust Street, Decatur, Alabama.

2. My household consists of six persons: myself, and my five children, James Whitener, 20 years old, Ricky Joe Whitener, 18 years old, Trease Faye Whitener, 17 years old, Cynthia Ann Lee, 12 years old, and Charles Lee, 10 years old. My husband, Charles S. Lee, is not a member of my household—he deserted his family several months ago.

3. I have received no support from my husband since he deserted his family. Consequently, our present household income is $23, which I receive from the Alabama Pension and Security Department's Aid to Dependent Children program for my daughter Faye. I have applied for additional funds under this same program for support of my other children, and expect to receive these monthly supplements in the near future.

4. My monthly household expenses include the following items:

Rent	$ 13.00
Food	148.00
Electricity and Utilities	8.00
Clothing	20.00
Medicine	20.00
Transportation	15.00
Personal incidentals, hygienic goods, etc.	25.00
	$249.00

5. Presently, I am unable to afford even a minimum nutritional diet for myself and my children. Should I receive an increase in my monthly A.D.C. payments, I will still be able to afford only a small fraction of the food, clothing, and

household goods necessary to maintain my household. I would, however, be able to afford substantially more household necessities if my household was eligible for food stamps. With the $69.00 per month that I anticipate from the Alabama Department of Pensions and Security, I would be able to purchase $148.00 worth of food at a cost of $14.00 in food stamps—thereby realizing $134.00 each month in food savings—a sum equivalent to almost 200% of my anticipated monthly income.

6. My household has been refused this badly needed food stamp aid by the Alabama Department of Pensions and Security because my husband declared my sons Ricky and James Whitener as tax dependents on his 1971 tax return. This benefit is denied us despite the fact that my husband has not been supporting me and my children since he deserted us earlier this year, and, most likely, will not be supporting us in the future.

7. My husband was employed in Huntsville, Alabama. He left that job when he deserted his family several months ago. I do not know his present whereabouts and do not know if he is employed. My children and I have received no support from him since he left us.

8. Food stamps provide the only solution to my family's present inability to purchase a nutritionally adequate diet. However, because of the "tax dependent" provisions in the Food Stamp Act, this aid will only be available if I force my two oldest children to leave their home. I cannot do this to my son James who suffers from mental retardation and has spent some time in the Alabama Mental Institution in Tuscaloosa, Alabama. Nor can I throw my son Ricky out into the streets. Instead, my family will continue to live without adequate food and other necessities of life. I fear that hunger, undernutrition, and malnutrition will soon inflict greater suffering upon my family and myself.

/s/ Nancy M. Lee
NANCY M. LEE

Subscribed and sworn to
as true before me this
8th day of June, 1972.

William L. Falls
NOTARY PUBLIC

[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT OF VICTORIA ALDERETE

STATE OF TEXAS
COUNTY OF BEXAR } ss

VICTORIA ALDERETE, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 43 years old and of Mexican-American descent. I am a citizen of the United States and reside at 302 St. Louis Street in San Antonio, Bexar County, Texas.

2. My household consists of six persons, to wit: myself and the following five children:

George, my son, 18 years old;
Consuelo, my daughter, 14 years old;
David, my son, 9 years old;
Carlos, my son, 5 years old;
Victoria, my daughter, 1-½ years old.

3. I was divorced on January 8, 1968, and ex-husband's name is Juan Alderete. He is 45 (Forty-Five) years old, and he is not living in our household. To the best of my knowledge, it was not ordered or stipulated in the divorce decree which dissolved this marriage, that either my husband, or I, should be permitted to claim the exemptions or deductions applicable to the children born during the marriage for federal income tax purposes. My husband resides at 950 S.W. 39th Street in San Antonio, Bexar County, Texas.

4. My household's total monthly income is $205.00. This amount is attributed to $105.00 child support payment, and $100.00 AFDC grant.

5. My household's monthly expenses include the following:

House payment	$ 73.00
Food	71.00
Utilities (gas, electricity and water)	17.00
School costs	4.00
Clothing	13.00
Laundry	18.00
Hygenic Items and recreation	9.00
	$205.00

6. My household budget is a very tight one, and I am barely able to maintain my family and provide for the above-listed necessities. I have been able to do this, thus far, primarily because of my relatively low food costs, which has been kept to a minimum because my household has used food stamps. In the past, I have been able to purchase $144.00 worth of food stamps that have cost me $46.00, thereby saving me $98.00 in monthly food expenses— a sum equivalent to almost 50% of my household's total monthly income. With an additional expenditure of $25.00 to supplement my monthly food stamp purchase, I have been able to feed myself and my children adequately.

7. Recently, I was informed by the Texas Department of Public Welfare that my children and I could no longer receive food stamp assistance because my ex-husband, Juan Aldetete, [sic] claimed our children as dependents for federal income tax purposes. A true and correct copy of this denial is attached hereto, and marked as Exhibit A, and incorporated herein for all purposes. To the best of my knowledge, my husband has claimed our children as dependents for federal income tax purposes since our divorce was granted.

8. I appealed the Welfare Department's decision denying my family food stamp assistance on May 9, 1972. A true and correct copy of my petition for an appeal hearing is attached hereto, and marked as Exhibit B, and incorporated herein for all purposes. On or about May 26, 1972, I was notified as to my appeal hearing. A true and correct copy of such notification is attached hereto, and marked as Exhibit C, and incorporated herein for all purposes. My representative attended the appeal hearing on my behalf. On or about June 22, 1972, I received the Hearing Officer's decision, which stated that my appeal was dismissed because I did not appear, but from a review of available information upon which the denial of my eligibility was based it was felt that clarification of the Tax Dependent provisions of the food stamp program needed clarification and that my food stamp eligibility would be continued. A true and correct copy of this decision is attached hereto, and marked as Exhibit D, and incorporated herein for all purposes. However, on or about July 6, 1972 my legal representative was informed by the Hearing Officer that I would be denied eligibility to participate in the food stamp program, based

on additional clarification received by him of the tax dependent provisions of the food stamp program. A true and correct copy of such notification is attached hereto, and marked as Exhibit E, and incorporated herein for all purposes.

9. The only effect my husband's income tax returns could possibly have on my receiving food stamps is his claiming my oldest son, George, as a dependent. According to the Welfare Department, since George is 18 years old, such a claim renders my entire household ineligible for food stamps under the Food Stamp Act's "tax dependency" provision. Therefore, since I do not have any control over whether my husband claims our children as dependents for income tax purposes, the only way that my family can receive food stamps is if I force George to leave our home. Should I do this, there would be no child age 18 or older living in our household and therefore the "tax dependency" provision would not disqualify us for food stamps.

10. My family is a poor one, but very closely knit. Yet if my oldest son remains in our home, my family cannot receive food stamp assistance. I cannot force my own child to leave his home, but if I do not, we will not be able to have the food stamp assistance we received in the past and without it I fear my growing children will be faced with the horrors of inadequate diets leading to hunger and malnutrition.

VICTORIA ALDERETE
/s/ Victoria Alderete

Subscribed and sworn to before me this 11th day of July, 1972.

/s/ Rosa Lee Ortega
Notary of Public in and for
Bexar County, Texas

EXHIBIT-A

Form 821
March, 1972

STATE DEPARTMENT OF PUBLIC WELFARE

The State of Texas

PO Box 2410
San Antonio, Texas 78298
May 8, 1972

Ms. Victoria Alderete
302 St. Louis Avenue
San Antonio, Texas 78237

Case No: 2-237614

Dear Ms. Alderete:

After a careful review of your present circumstances, this Department has determined that you are not eligible for Food Stamps.

beginning 5-2-72 because: there is a tax dependent person in your home.

The above change will be delayed for 15 days from the date at the bottom to give you or your representative time to discuss it with a representative in this office. The representative in this office will be available to discuss with you the reason for the change, give you an opportunity to raise questions and allow you to give more information about your situation.

If you wish, you may also request a hearing before this decision is made final. A department representative will be glad to explain hearing procedures during a conference if you so desire.

For either a conference or to request a hearing, write, call or come by the office 1410 N. Elmendorf Street (phone 734-7245) and someone from this Department will be glad to help you.

/s/ Linda Ewing
(Signature) (Linda Ewing, WS Tech II)
1410 N. Elmendorf Street
State Department of Public Welfare
5-2-72
(Date)

EXHIBIT B

State of Texas
Department of Public Welfare

Form 17
November, 1971

PETITION FOR FAIR HEARING

TO: James C. Parker,
Hearing Officer
State Department of
Public Welfare
P.O. Box 2410
San Antonio, Texas

Case Name Victoria Alderete
Category AFDC
Case No. _____
Region No. 004
Race White County Bexar
Mailing Address _____
302 St. Louis
San Antonio, Texas

Program
Chesk *One:*

- ☐ Money Payment
- ☐ Medical Assistance
- ☒ Food Stamps
- ☐ Commodities
- ☐ Services
- ☐ WIN

Basis for Dissatisfaction
Check *One* or more:

- ☐ Denial of Application
- ☐ Denial of Assistance
- ☐ Amount of Assistance
- ☒ Reduction of Assistance
- ☐ Level of Nursing Care Approved
- ☐ Decision of Medical Review Team Regarding Incapacity
- ☐ Delay in Completing Application
- ☐ Delay in Raising Assistance
- ☐ Delay in Rendering Services
- ☐ Refusal to Act
- ☒ Opportunity to Apply Not Facilitated
- ☐ Decision to Refer for Employment or Training
- ☐ Decision *Not* to Refer for Employment or Training
- ☐ Decision Contrary to Claimant's Preference With Respect to Service

This request under 15 days Fair Hearing Procedure?

Yes ☒ No ☐

Check one:

☒ Appellant wishes to have an *appeal hearing* so that he may present evidence and/or information concerning his situation.

☐ Department representative has agreed to assist Appellant in filing a written *statement* regarding the case situation and no formal hearing will be necessary.

Give date and medium, appellant clearly expressed a desire to appeal.

Date May 9, 1972

Medium _____

Department
Representative _____

Budgeted Job No. _____

Office
Headquarters _____

• • • • •

Form 17
Page 2

Complete this side of form *only* if client has a representative.

I hereby notify the Hearing Officer that Melvin N. Eichelbaum & John Cowan (Print or type name of representative or legal counsel) who is acting in capacity of my legal representative is representing me in this appeal; therefore, this is my authorization for you to release to my legal representative, copies of any factual data furnished me prior to, during or after the Appeal Hearing.

If signed with an "X", two witnesses are required.

Victoria Alderete
Signature of Appellant

Melvin N. Eichelbaum
Signature of Representative

Bexar County Legal Aid Association
203 West Nueva Street
San Antonio, Texas 78207
Address of Representative

May 9, 1972
Date Signed

_____
Witness

_____
Witness

EXHIBIT C

STATE DEPARTMENT OF PUBLIC WELFARE

The State of Texas

Form 18

July, 1971

Acknowledgment and Notice of Fair Hearing

Mrs. Victoria Alderete
302 St. Louis
San Antonio, Texas 78237

Category AFDC

Case No. 237614

The Department of Public Welfare has received your request for a fair hearing in which you asked for a review of the recent action (or failure to act) on your case.

You are, therefore, advised that if you wish to avail yourself of this opportunity of appearing in person before a representative of the Department you may do so

at 3:00 o'clock P.M., June 7, 1972

at Guadalupe Community Center,
1801 W. Durango, 2nd Floor
San Antonio, Texas.

An informational sheet entitled "Statement of Appellant's Rights in Hearing Proceedings" is included with this letter to help you understand the appeal procedure.

In the event it is not possible for you to keep this appointment, please use the enclosed statement and envelope to notify me of the reason(s) why. If the time and place indicated above are suitable, please do not return the enclosed statement.

You may be assured that careful consideration will be given to all the facts concerning this situation.

STATE DEPARTMENT OF PUBLIC WELFARE

BY Saul Zalaznick
Hearing Officer

SAUL ZALAZNICK
Type Name of Hearing Officer

P.O. Box 2410—San Antonio
Type Address of Hearing Officer

223-5656

DATE: May 25, 1972

cc: Worker 8-01
Supervisor—Unit 8
Reports & Statistics, 042-0
Legal Aid

EXHIBIT D

P. O. Box 2410
San Antonio, Texas 78298
June 8, 1972

Mrs. Victoria Alderete
302 St. Louis
San Antonio, Texas 78237

Dear Mrs. Alderete:

You failed to appear for a scheduled hearing on June 7, 1972, regarding the denial of your eligibility to participate in the Food Stamp Program and you did not notify the hearing officer that you would not be able to appear. Your legal representatives did appear to represent you.

In compliance with the policies and procedures of this Agency it is assumed that you have abandoned your petition for a hearing and your appeal is dismissed.

From a review of available information upon which the denial of your eligibility was based it is felt that clarification is needed of the tax dependent provisions of the Food Stamp Program. Lacking such clarification at the present time, it was recommended that your Food Stamp Program eligibility be continued.

The worker has been requested to take appropriate action to continue your eligibility to purchase Food Stamps.

Sincerely yours,

/s/ Saul Zalaznick
SAUL ZALAZNICK
Appeals Analyst

SZ jmk
enc: Form 21
cc: Worker 8-01
Supervisor—Unit 8
Reports & Statistics, 042-0
Legal Aid

State of Texas
Department of Public Welfare

Form 21
July, 1971

OFFICIAL RECORD OF FAIR HEARING

1. *Identification*

Appellant Victoria Alderete Program Food Stamp Category-Case No. AFDC 2370

Appellant _____ Program _____ Category-Case No. _____

County Bexar Region No. 004 Fair Hearing No.(s). _____

2. *Persons Present for Fair Hearing:*

	Name	Capacity
1.		
2.		
3.		
4.		
5.		
6.		

3. *Principal Issue In Hearing Designate By Code*

Code: T

Specify: (Complete Only if Codes G or T are used)

Food Stamp Eligibility

4. Representation of Appellant During Hearing

Code: _____

5. *Nature of Request*

XX Appellant requested hearing as a challenge of fact or judgment

_____ Appellant requested hearing as protest of agency policy

6. *Record of Action Taken*

Date of Departmental Action From Which Appeal is Made 5-2-72

Type Action Denial of Food Stamp Assistance From _____ To _____ Effective 7-1-72

Type Action _____ From _____ To _____ Effective _____

Code No. and Principal Reason: Food Stamp Denial Code 11—Unable to establish eligibility due to tax dependents in the household.

Date of Request for Fair Hearing 5-11-72

Fair Hearing Held At DISMISSED (Time) 6-7-72 (Date) 1801 W. Durango (Place)

State of Texas
Department of Public Welfare

Form 21
July, 1971
Page 2

7. Budget Sheet

Item	Hearing Officer's Budget In Relation to Decision Date _____		Hearing Officer's Budget of Changes Since Decision Date _____	
	I	II	I	II
Personal Needs				
Housing: Public / Private				
Utilities				
Prescribed Drugs				
Social Care				
Professional Care				
Other (Specify)				
Total Needs				
Recognizable Needs				
Net Income				
Unmet Needs				
Recommended Grant				
Special Allowance: No. Months _____				

Group Income Source	
1. OASDI	
2. V.A.	
3. R.R.	
4. Net Earned	
5. Other Income	
6. Total Income	
7. Less Income Exemp.	
8. Net Income	

Other Grant:
Adult $_____
AFDC $_____

8. Hearing Officer's Decision and Explanation

Point at issue is the denial of Food Stamp Program eligibility due to the presence of a "tax dependent" in the household.

Appellant failed to appear for a scheduled hearing and did not notify the hearing officer that she would be unable to appear. The appeal is dismissed.

A review of the available information reflects that parents are divorced; the child resides in the household of the appellant; the parent outside the home furnishes some support which has been previously established to be less than half of the child's support during the preceding and current years since the child is a recipient of AFDC and that the child has been claimed as a tax dependent for Federal Income Tax purposes during the last tax year.

It is felt that clarification is needed in the "tax dependent" provisions of the Food Stamp Program as it is felt that the intent of said provisions is to deny eligibility to bona fide tax dependents who are not residing in the taxpayer household due to attendance at school or residing in communal type arrangements and the taxpayer is either furnishing support or capable of furnishing support to the tax dependent. Clarification of the aforementioned provisions has been requested and pending said clarification it is recommended that the AFDC household not be denied Food Stamp assistance.

The worker has been notified of this recommendation.

STATE DEPARTMENT OF PUBLIC WELFARE
BY Saul Zalaznick
Hearing Officer

SAUL ZALAZNICK
Type Name of Hearing Officer
1801 W. Durango
Type Address of Hearing Officer

DATE OF DECISION 6-7-72

cc: Worker 8-01
Supervisor—Unit 8
Reports & Statistics, 042-0
Legal Aid

EXHIBIT E

The State of Texas

STATE DEPARTMENT OF PUBLIC WELFARE
P. O. Box 2410
San Antonio, Texas 78298

July 5, 1972

Mr. Melvin N. Eichelbaum
Bexar County Legal Aid Association
203 W. Nueva
San Antonio, Texas 78207

RE: Victoria Alderete, Food Stamp Appeal
302 St. Louis, San Antonio

Dear Mr. Eichelbaum:

This office has received clarification regarding tax dependent provisions contained in this Agency's Food Stamp Program Handbook which necessitates reconsideration of the recommendation made to continue Food Stamp eligibility of your client, Victoria Alderete, whose appeal was dismissed when she failed to appear for the hearing.

The U.S. Department of Agriculture, Dallas, has advised that tax dependent requirements can only be interpreted as written into the law and that there can be no deviation from the wording of the law. In order for this Agency to be in compliance with Federal regulations, it is deemed that the action of the Agency and the provisions of paragraphs 2261 and 2262, Food Stamp Program Handbook, are applicable and Mrs. Alderete will be denied her eligibility to participate in the Food Stamp Program.

Sincerely yours,

/s/ Saul Zalaznick
SAUL ZALAZNICK
Appeals Analyst

SZ/jmk
cc: Enrique Salinas
Regional Director
Financial Services

[Title Omitted in Printing]

AFFIDAVIT OF PLAINTIFF
PEARL R. BEAVERT

[Filed July 17, 1972]

STATE OF WASHINGTON
COUNTY OF KING } ss:

PEARL R. BEAVERT, being first duly sworn, upon oath, deposes and says:

I live at 2008 - 8th Avenue North, Seattle, Washington, 98109, with my two children. I am divorced.

We are recipients of Aid to Families With Dependent Children from the Public Assistance Division of the Department of Social and Health Services of the State of Washington. We receive $224.00 per month for my two children and myself.

On May 26, 1972, I received a letter dated May 24, 1972, from the Department of Social and Health Services signed by H. Greenwood, notifying me that my food stamp benefits would be terminated because my household contained a tax dependent, my daughter, Crystal, who was claimed for the year 1971 on her father's Federal Income Tax Return. I was further advised that because her father is not a person certified for the food stamp program, my household would now be ineligible for such benefits.

My daughter, Crystal, is in high school and not only do I have great love and affection for her, but I feel morally bound to support her and allow her to continue living in my home. I believe it would be greatly detrimental to her to force her to either leave our home or find employment to supplement our income.

My monthly expenses are as follows:

house payment	$102.00/mo.
food and household necessities	$125.00/mo.
utilities	$ 69.00/mo.
TOTAL	$296.00/MONTHLY

In addition, I have other household expenses such as clothing, transportation, and toiletries. I have no set amount for these inasmuch as I must eke out of my monthly income any small sum I can for these necessities.

My family would be unable to survive were it not for small and infrequent gifts and loans from relatives.

Prior to the time I was terminated from the food stamp program, I was receiving $88.00 worth of food stamps and paying $58.00 for them.

Since the time I have been terminated, my family and I have suffered great hardship. My children are both teenagers and need a substantial amount of nutritional food each day.

By denying my family and I food stamps, my family is threatened with serious and irreparable injury. We cannot maintain adequate nutrition for all of us and we need immediate help.

/s/ Pearl R. Beavert
PEARL R. BEAVERT
Plaintiff

SUBSCRIBED AND SWORN to before me this 18th day of June, 1972.

/s/ Valerie D. Badon
Notary Public in and for the State of Washington, residing at Seattle.

My commission expires on the 7th day of December, 1974.

LINDA L. DAWSON
SEATTLE LEGAL SERVICES CENTER
2516 East Cherry Street
Seattle, Washington 98122
(206) 323-0350

[Title Omitted in Printing]

AFFIDAVIT OF JOE BEN VALDEZ

[Filed July 17, 1972]

STATE OF COLORADO
COUNTY OF PUEBLO } ss:

Joe Ben Valdez, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 18 years old and reside at 1114 E. 6th Street, Pueblo, Colorado.

2. My household consists of myself, my wife Isable, 18 years of age, and our infant baby, 10 days old.

3. Our total household income is $224.00 a month—$194.00 is received from the Colorado Welfare Department's ADC-UP Program, and $30.00 is received from the same source for transportation expenses incurred by me as a participant in the Work Incentive Training Program.

4. Our monthly expenses include the following items:

Rent	$80.00
Electricity	4.00
Food	82.00
Clothing	10.00
Insurance	8.00
Transportation (Gas and Auto Repairs)	45.00
Education (Lunches)	6.00
Recreation	2.00
	$237.00

We are barely able to meet these expenses and often must do without basic necessities of life or adequate food and clothing. These financial problems have increased recently when my wife gave birth to her child.

5. Presently, more than a third of our monthly budget is spent on food. Food Stamps would be most helpful in reducing this expense, thereby allowing us an adequate nutritional diet and additional funds for clothing, hygenic goods, personal incidentals, etc. According to present standards, I believe I could purchase $88.00 worth of Food Stamp coupons each month at a cost of $58.00, thereby saving $30.00 in food costs each month.

6. Despite our desperate need for food relief, my house-

hold has been denied food stamps by the Colorado Welfare Department solely because my father, Ben G. Valdez, claimed me as a dependent for Federal income tax purposes for the year 1971. I am no longer a dependent, and will not be claimed as such in 1972.

7. Ben G. Valdez is the head of five-member household consisting of himself (54 years od), his wife, Rose (53 years old), and Daniel (17 years old). He is a laborer at the Colorado Fuel and Iron Corporation and earns approximately $450.00 monthly.

8. Ben Valdéz's monthly household expenses include the following items:

Utilities		17.00
Electricity		13.00
Water		9.50
Food		180.00
Clothing		20.00
Insurance (Life, automobile, and fire)		23.88
Transportation (Gasoline and bus)		22.00
Education (Lunches)		20.00
Recreation		3.00
Debts (monthly payments)		
Federal Credit Union	(total debt: $4,300.00)	$128.00
Montgomery Wards	(total debt: $ 370.00)	20.00
J. C. Penney's	(total debt: $ 160.00)	15.00
Crews Beggs	(total debt: $ 130.00)	10.00
Medical Bills	(total debt: $ 290.00)	16.00
	TOTAL:	$497.38

9. Because of these prohibitive household expenses, my father is unable to provide my wife and me with support. In fact, he is barely able to support his wife and his other three children on his monthly income. My father is additionally burdened in meeting this responsibility because he is a diabetic and suffers from an ulcer.

10. My wife is very much in need of an adequate nutritional diet because she is nursing a child. Despite the fact that: our income is very low, we receive no support from my parents, my parents will not be claiming me as a tax dependent 1972, we are still unable to receive food stamps because of my being claimed a dependent for tax purposes in 1971. Without this relief, my wife and I will have to conserve our meager funds and deny ourselves adequate

food, clothing and other necessities of life during this most crucial period of our marriage.

/s/ Joe Ben Valdez
JOE BEN VALDEZ

SUBSCRIBED AND SWORN to before me this 31st day of May, 1972 by Joe Ben Valdez.

/s/ (Illegible)
Notary Public

My Commission expires: 5-9-76

[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT OF ISABEL M. VALDEZ

STATE OF COLORADO }
COUNTY OF PUEBLO } ss:

Isabel M. Valdez, being duly sworn, deposes and says:

1. I am a plaintiff in the lawsuit. I am 18 years of age and reside at 1114 East 6th Street, Pueblo, Colorado.

2. My household consists of myself, my husband Joe Ben Valdez, 18 years of age, and our infant child, 10 days old.

3. Our total household income is $244.00 a month—$194.00 is received from the Colorado Welfare Department's ADC-U Program, and $30.00 is received from the same source for transportation, expenses incurred by my husband as a participant in the Work Incentive Training Program.

4. Our monthly expenses include the following items:

Rent	$80.00
Electricity	4.00
Food	82.00
Clothing	10.00
Insurance	8.00
Transportation (Gas and Auto Repairs)	45.00
Education (Lunches)	6.00
Recreation	2.00
	$237.00

We are barely able to meet these expenses and often must do without necessities of life or adequate food and clothing. These financial problems have increased lately when I gave birth to my child.

5. Presently more than a third of our monthly budget is spent on food. Food Stamps will be most helpful in reducing this expense, thereby allowing us an adequate nutritional diet and additional funds for clothing, hygenic goods, personal incidentals, etc. According to present standards I believe we could purchase $88.00 worth of Food Stamps coupons each month at a cost of $58.00, thereby saving $30.00 in food cost each month.

6. Despite our desperate need for food relief, our household has been denied food stamps by the Colorado Welfare Department solely because my husband's father, Ben G. Valdez, claimed him as a dependent for Federal Income Tax purposes for the year 1971. I know that he is no longer a dependent and will not be claimed as such in 1972.

7. Ben G. Valdez, my father-in-law, is the head of a five member household, consisting of himself (54 years old), his wife, Rose (53 years old), and his three other children, Nancy (21 years old), Joan (15 years old), and Daniel (17 years old). He is a laborer at the Colorado Fuel & Iron Corporation and earns approximately $450.00 monthly.

8. Ben Valdez's monthly household expenses include the following items:

Utilities		17.00
Electricity		13.00
Water		9.50
Food		180.00
Clothing		20.00
Insurance (Life, automobile, and fire)		23.88
Transportation (Gasoline and bus)		22.00
Education (Lunches)		20.00
Recreation		3.00
Debts (monthly payments)		
Federal Credit Union	(total debt: $4,300.00)	$128.00
Montgomery Wards	(total debt: $ 370.00)	20.00
J. C. Penney's	(total debt: $ 160.00)	15.00
Crews Beggs	(total debt: $ 130.00)	10.00
Medical Bills	(total debt: $ 290.00)	16.00
		$497.38

9. Because of these prohibitive household expenses, my father-in-law is unable to provide my husband and me with support. In fact, he is barely able to support his wife and his other three children on his monthly income. My father-in-law is additionally burdened in meeting these responsibilities because he is a diabetic and suffers from an ulcer.

10. I am very much in need of an adequate diet (nutritional) because I have an infant baby and have special needs. Despite the fact that: Our income is very low, we receive no support from our parents, my husband's parents cannot afford to provide us with support, and my husband's parents will not be claiming him as a tax dependent in 1972,

we are still unable to receive food stamps because my husband's being claimed a dependent for tax purposes in 1971. Without this relief, my husband, my baby and I will have to conserve our meager funds and deny ourselves adequate food, clothing and other necessities of life during this most crucial period of our marriage.

/s/ Isabelle M. Valdez
ISABEL M. VALDEZ

SUBSCRIBED AND SWORN to before me this 31st day of May, 1972 by Isabel M. Valdez.

/s/ (Illegible)
Notary Public

My Commission expires: 5-9-76

[Title Omitted in Printing]

AFFIDAVIT

[Filed July 17, 1972]

STATE OF IOWA
COUNTY OF BLACK HAWK } ss:

I, Robert A. Broderson, age 18, of 309 East Nineth Street, Waterloo, Iowa, being duly sworn, depose and state as follows:

1. That on the 8th day of March, 1972, my wife Beverly and I applied for food stamps at the food stamp office in Waterloo, Iowa. At the time of said application my net earnings were approximately $110.00 per month and my wife had no earnings.

2. At the time of the application we were paying $65.00 per month for rent at 1420 Grant Street, Waterloo, Iowa.

3. That for the tax year 1971 I was claimed as a dependent by my parents, Harold L. and Vanette Broderson, inasmuch as they had provided over fifty per cent of my support.

4. That on December 26, 1971, I married Beverly Brown, age 16, who was also claimed by her parents, Robert E. and Muriel Brown, as a dependent for the tax year 1971.

5. That my wife and I resided with my parents until the end of February, 1972, at which time we established our own home at 1420 Grant Street, Waterloo, Iowa.

6. That I have had conversations with my parents and they understand that they cannot claim me as a tax dependent for the tax year 1972 and that I intend to file my own income tax return along with my wife.

7. That the food stamp office, upon discovering from information that I gave in the application that I had been claimed as a tax deduction in 1971 by someone in another household, refused to issue any food stamps to myself or my wife.

8. That a full and fair hearing was held before Mr. Henry Gering, hearing officer for the Iowa Department of Social Services on the 20th day of April, 1972, and that the Commissioner of the Iowa Department of Social Services ruled on the 24th day of April, 1972, that we were ineligible for food stamps because of the tax dependency rule found in the federal statute and regulations.

9. That my wife is expecting a child on or about July 10, 1972, and that proper nutrition and diet is vital to her.

10. Since being turned down for food stamps we have applied to the Black Hawk County Relief Department and they have issued to us two food orders, one in the amount of $12.00 and one in the amount of $50.00. It is our understanding with that office that this assistance will not be permanent but will be temporary to see when other arrangements can be made to help pay our food bill.

11. Since the turn down and the full and fair hearing, I have obtained another job working at Consolidated Service Station as an attendant. My earnings will vary but I expect to make between $25.00 to $27.00 a week. Also we have moved into another apartment where the rent will be $75.00 per month.

12. We have no medical insurance or arrangements for the payment of the expenses connected with the birth of the child expected in July, 1972, and I assume I will have to be able to pay this out of my weekly wages.

/s/ Robert A. Broderson
ROBERT A. BRODERSON

SUBSCRIBED and sworn to before me this 31st day of May, 1972.

/s/ Donna M. Fruchlenicht
Notary Public

[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT

STATE OF HAWAII }
COUNTY OF MAUI }

I, KRISTI SCHULTZ, being first duly sworn, depose and say:

That I am 19 years of age and am an adult under the laws of the State of Hawaii. I live in Peahi, Maui, Hawaii with a friend and her two children aged two and three years old. I have no income from any source. The food I eat is donated to me by my friend out of the allocation of food stamps she receives for herself and the two children.

In August of 1971 I began to receive food stamps which were issued by the Maui Branch office of the Hawaii Department of Social Services and Housing. At that time I paid $.50 for $27.50 worth of stamps.

In November 1971 my allocation of food stamps was terminated on the grounds that my parents were intending to declare me as a tax dependent for the year 1971, even though all support from them had ceased as of June of that year. At the time my food stamps were terminated I was informed by my food stamp worker that if I got married to my fiance we would be eligible for food stamps as a family unit. Relying on this information and desparately in need of food my fiance and I were married on January 19, 1972.

Immediately following our marriage my husband and I applied for a food stamp allocation as a family unit. However our application was denied on the grounds that one member of the household, myself, had been declared as a tax dependent of another household for the previous year. My parents have informed me that they will not claim me as a dependent for income tax purposes for 1972.

Because I was denied food stamps and was without any means of support, I was forced to live off of what I could find growing near my home. Accordingly, for a period of approximately 4 weeks I ate only wild sweet potatoes and water. As a result of this limited diet I became seriously malnourished and subsequently became ill for a period of

approximately 4 months. The emotional strain on my husband and me cause by this deprivation was a primary factor leading to our divorce in May of 1972.

I declare, under penalty of perjury, that the foregoing is true and correct.

executed on June 19, 1972, at Wailuku, Maui, Hawaii.

/s/ Kristi Schultz
KRISTI SCHULTZ

Subscribed and sworn to before
me this 19th day of June, 1972.

Ema R. Murphy
Notary Public, Second Judicial
Circuit, State of Hawaii.
My Commission expires: 2/19/75.

[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT OF LEONILA NEVAREZ

STATE OF TEXAS }
COUNTY OF BEXAR } ss

LEONILA NEVAREZ, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 38 years old and of Mexican-American descent. I am a permenent [sic] resident alien of the United States and reside at 626 Briggs Avenue in San Antonio, Bexar County, Texas.

2. My household consists of six persons, to wit: myself and the following five children:

Larry Rene, my son, 18 years old;
Alma Linda, my daughter, 17 years old;
Marina, my daughter, 15 years old;
Rocky James, my son, 4 years old; and
Joseph Daniel, my son, 9 months old.

3. I am married, and my husband's name is Raymond Nevarez. He is 46 years old, and he is not living in our household. He deserted me and the children last March, and he does not contribute, in any way, toward our support. His whereabouts are unknown to me, although I have made a diligent effort to ascertain same.

4. My household's total monthly income is $215.00. This amount is attributed to the combined earnings of my two oldest children, who are presently employed.

5. My household's monthly expenses include the following:

Appliance and furniture payments	$ 30.00
Rent	60.00
Food	41.00
Utilities (gas, electricity and water)	19.50
Telephone	7.50
Transportation (bus fares)	22.00
School costs	2.50
Medicine and drugs	4.00
Clothing	15.00
Hygenic items and recreation	3.75
	$205.25

6. My household budget is a very tight one, and I am barely able to maintain my family and provide for the above-listed necessities. I have been able to do this, thus far, primarily because of my relatively low food costs, which has been kept to a minimum because my household has used food stamps. In the past, I have been able to purchase $144.00 worth of food each month with food stamps that have cost me $21.00, thereby saving me $123.00 in monthly food expenses—a sum equivalent to more than 50% of my household's total monthly income. With an additional expenditure of $20.00 to supplement my monthly food stamp purchases, I have been able to feed myself and my children adequately.

7. Recently, I was told by the Texas Department of Public Welfare that my children and I could no longer receive food stamp assistance unless my husband, Raymond Nevarez, filled out and returned certain forms regarding his claiming or not claiming our children as dependents for income tax purposes. As I do not know where my husband is and cannot locate him, I have not been able to comply with the Welfare Department's demands. To the best of my knowledge, however, my husband has not filed an Income Tax return since 1968. I told the Welfare Department this but was informed that it did not make any difference and that they had to follow the regulations.

8. I appealed the Welfare Department's decision denying my family food stamp assistance on June 5, 1972. A true and correct copy of my petition for an appeal hearing is attached hereto, and marked as Exhibit A, and incorporated herein for all purposes. On or about June 12, 1972, I was notified as to my appeal hearing. A true and correct copy of such notification is attached hereto, and marked as Exhibit B, and incorporated herein for all purposes. I attended the appeal hearing, and my representative and I attempted to explain my predicament, and the effect denying me food stamps would have on my family. On or about June 22, 1972, I received a copy of the Hearing Officer's decision, which sustained the Agency's action in my case. A true and correct copy of this decision is attached hereto, and marked as Exhibit C, and incorporated herein for all purposes.

9. The only effect my husband's Income Tax returns (if any) could possibly have on my receiving food stamps is

if he claimed my oldest son, Larry, as a dependent. According to the Welfare Department, since Larry is 18 years old, such a claim would render my entire household ineligible for food stamps under the Food Stamp Act's "tax dependency" provision. Therefore, since I do not know my husband's whereabouts, the only way that my family can receive food stamps is if I force Larry to leave the house. Should I do this, there would be no child age 18 or older living in our household and therefore the "tax dependency" provision would not disqualify us for food stamps.

10. My household is a poor one. We receive no support from my husband, and my oldest son, Larry, provides us with more than half of our financial support. Yet if he remains in our home, my family cannot receive food stamp assistance. I cannot force my own child to leave his home, nor can we get along without the financial support he provides for us. This means that we will not be able to have the food stamp assistance we received in the past and without it I fear my growing children will be faced with the horrors of inadequate diets leading to hunger and malnutrition.

/s/ Leonila Nevarez
LEONILA NEVAREZ

Subscribed and sworn to before me this 29th day of June, 1972.

/s/ Martha Jamez
Notary Public in and for
Bexar County, Texas

EXHIBIT A

Form 17
November, 1971

State of Texas
Department of Public Welfare

PETITION FOR FAIR HEARING

TO: Mr. James C. Parker,
Hearing Officer
State Department of
Public Welfare

Case Name Nevarez, Leonila
Category HPA
Case No. 28947
Region No. 004
Race Mex-Am.
County Bexar
Mailing Address 626 Briggs
San Antonio, Texas 78211

PROGRAM

Check *One:*

- ☐ Money Payment
- ☐ Medical Assistance
- ☒ Food Stamps
- ☐ Commodities
- ☐ Services
- ☐ WIN

Basis for Dissatisfaction
Check *One* or more:

- ☐ Denial of Application
- ☒ Denial of Assistance
- ☐ Amount of Assistance
- ☐ Reduction of Assistance
- ☐ Level of Nursing Care Approved
- ☐ Decision of Medical Review Team Regarding Incapacity
- ☐ Delay in Completing Application
- ☐ Delay in Raising Assistance
- ☐ Delay in Rendering Services
- ☐ Refusal to Act
- ☐ Opportunity to Apply Not Facilitated
- ☐ Decision to Refer for Employment or Training
- ☐ Decision *Not* to Refer for Employment or Training

☐ Decision Contrary to Claimant's Preference With Respect to Services

---

This request made under 15 days Fair Hearing Procedure?
Yes ☒ No ☐

Check one:

☒ Appellant wishes to have an *appeal hearing* so that he may present evidence and/or information concerning his situation.

☐ Department representative has agreed to assist Appellant in filing a written *statement* regarding the case situation and no formal hearing will be necessary.

Give date and medium, appellant clearly expressed a desire to appeal.

Date June 5, 1972

Medium Bexar County Legal Aid Assoc.

Department Representative Gabriel Puente, Jr.

Budgeted Job No. 004-70-C-01-424

Office Headquarters 925 So. Alamo

Case Name: Nevarez, Leonila
FS #28947
Region: 004
County: Bexar

Point of Issue: Tax Dependency Requirement.

Policy: Food Stamp Manual Section 2262, (par. 1 & 2263 par. 5 state:

"Any household which includes a tax dependent, as defined in this manual, will not be eligible to participate in the program —."

"Because the taxpayer household is the sole source of this information, the failure of the taxpayer household to complete and return this

questionnaire will be grounds for denying participation for tax dependent households."

Summary: Client has an 18 yr. old son living in her household who meets the definition of a tax dependent. She was asked to give us her husband's address so that we can mail the tax dependent questionnaire to him. She states she does not know husband's whereabouts and husband's parole officer has not heard from him either. She went to Legal Aid for advise. They advised her to appeal.

Gabriel Puente, Jr. WS Tech. II
June 5, 1972

EXHIBIT A

EXHIBIT B

STATE DEPARTMENT OF PUBLIC WELFARE

The State of Texas

Form 18
July, 1971

ACKNOWLEDGMENT AND NOTICE OF FAIR HEARING

Mrs. Leonila Nevarez
626 Briggs
San Antonio, Texas

Category: Food Stamps
Case No.: 28947

Dear Mrs. Nevarez:

The Department of Public Welfare has received your request for a fair hearing in which you asked for a review of the recent action (or failure to act) on your case.

You are, therefore, advised that if you wish to avail yourself of this opportunity of appearing in person before a representative of the Department you may do so

at 1:30 o'clock PM., June 19, 1972
at Welfare Office (Guadalupe Community Center)
1801 W. Durango Street

An informational sheet entitled "Statement of Appellant's Rights in Hearing Proceedings" is included with this letter to help you understand the appeal procedure.

In the event it is not possible for you to keep this appointment, please use the enclosed statement and envelope to notify me of the reason(s) why. If the time and place indicated above are suitable, please do not return the enclosed statement.

You may be assured that careful consideration will be given to all the facts concerning this situation.

STATE DEPARTMENT OF
PUBLIC WELFARE

By: James C. Parker
Hearing Officer
James C. Parker
Type Name of Hearing Officer
P.O. Box 2410, San Antonio, Texas
Type Address of Hearing Officer

DATE: June 12, [1972]

cc: Worker 70-01
Supervisor Unit 70
Reports and Statistics 042-0

EXHIBIT C

Mrs. Leonila Nevarez
626 Briggs
San Antonio, Texas

Dear Mrs. Nevarez:

I have carefully reviewed your Appeal based on the denial of your application for participation in the Food Stamps Program.

From facts and evidence presented at the Hearing, it was determined that the involved caseworker had properly and correctly applied Agency's policies and procedures as described in Food Stamps Manual, Section 2263 wherein it is stated that a tax dependent household will not be certified until the dependent income and tax dependency questionnaire, signed by the taxpayer or his spouse, has been received by the certifying office of the tax dependent.

The action of the Agency is Sustained. The attached copy of Form 21 is your official record of this Appeal.

Sincerely yours.

/s/ James C. Parker
JAMES C. PARKER
Appeals Analyst

JCP/mlc
cc: Worker 70-01
Supervisor Unit 70
Reports and Statistics 042-0
Legal Aid Association

State of Texas
Department of Public Welfare

Form 21
July, 1971

OFFICIAL RECORD OF FAIR HEARING

1. *Identification*

Appellant Leonile Nevarez Program Food Stamps Category- Food Stamps Case No. 28947

Appellant _____ Program _____ Category- Case No. _____

County Bexar Region No. 004 Fair Hearing No(s). _____

2. *Persons Present for Fair Hearing:*

Name	Capacity
1. Leonila Nevarez	Appellant
2. John A. Cowan	Representative
3. James C. Parker	Hearing Officer
4.	
5.	
6.	

3. *Principal Issue In Hearing Designate By Code*

Code: L

Specify: (Complete Only if Codes G or T are used)

4. Representation of Appellant During Hearing
Code: A

5. *Nature of Request*

XX Appellant requested hearing as a challenge of fact or judgment

__ Appellant requested hearing as a protest of agency policy

6. *Record of Action Taken*

Date of Departmental Action From Which Appeal is Made _____

Type Action DENIED From _____ To _____ Effective _____

Type Action _____ From _____ To _____ Effective _____

Code No. and Principal Reason: Code (11) Unable to establish eligibility due to tax dependents in the household

Date of Request for Fair Hearing 6-5-72

Fair Hearing Held At 1:30 P.M. (Time) 6-19-72 (Date) 1801 W. Durango (Place)

8. Hearing Officer's Decision and Explanation

The purpose and scope of the Food Stamp Program was explained to the appellant in that it was to encourage and enable low income households to increase their level of nutrition; and to carry out this purpose, the Program provides for the issuance of Food Coupons to *eligible* households in line with their normal food requirements and purchases. The value of Food Coupons issued to each eligible household is determined by an established scale based on the household's available income and the number of members in the household.

Appellant and her Representative was advised that the Food Stamps Program rules and regulations were revised effective 5-1-72 and that the following certification procedures would have to be followed.

Section 2263—TAX DEPENDENT APPLICATION

Paragraph 1: When an application shows a tax dependent who is claimed by another household which is not certified as being eligible for the Food Stamp Program or Food Distribution Program, the tax dependent household will be determined ineligible to participate in the Food Stamp Program.

Paragraph 3: "When an application shows a tax dependent who is claimed by a household certified to participate in a Food Assistance Program, the food stamp office of the tax dependent will mail a Dependent Income and Tax Dependency Questionnaire and cover letter (Form 819), directly to the taxpayer household. This questionnaire need not be mailed to the taxpayer except on initial certification and when circumstances indicate a change in the amount of support.

Paragraph 4: The taxpayer household will return the questionnaire to the Food Stamp Office where the tax dependent household applied. The tax dependent household will not be certified until the questionnaire, signed by the taxpayer or his spouse, has been received by the certifying office of the tax dependent. This questionnaire must be mailed directly to the certifying office by the taxpayer household.

(Continued)

STATE DEPARTMENT OF
PUBLIC WELFARE

By: James C. Parker
Hearing Officer
James C. Parker
Type Name of Hearing Officer
P.O. Box 2410, San Antonio, Texas
Type Address of Hearing Officer

Date of Decision: 6-19-72

Paragraph 5: "Because the taxpayer household is the sole source of this information, the failure of the taxpayer household to complete and return this questionnaire will be grounds for denying participation for tax dependent households."

Evidence presented at the Hearing indicates that the appellant did see her spouse last month and that she did obtain his local address from his parole officer but she also stated that she endeavored to contact him at this address but was unable to do so. It was also learned that 2 children in this household group are employed with an approximate monthly combined earnings of $215.00.

Consultation with higher echelon personnel in the Food Stamp Program was made and it was verified that in their opinions the Section 2263 previously quoted does apply.

The Point at Issue was whether or not the appellant meets Food Stamps eligibility requirements.

The action of the Agency is Sustained in that it was determined that the involved caseworker had properly and correctly applied Agency's policies and procedures as described in the Food Stamp Manual, Section 2263.

APPENDIX A

[to Plaintiffs' Memorandum of Law, filed July 17, 1972]

STATE OF COLORADO
DEPARTMENT OF SOCIAL SERVICES

In the Matter of Appeal No. 2347 from the Decision of the Pueblo County Department of Public Welfare denying eligibility for Food Stamp assistance to Mr. Joseph Valdez	Initial Decision of Hearing Officer

The above-captioned matter came on for hearing before James E. Dotson, Hearing Officer, State Department of Social Services in the offices of the Pueblo County Department of Public Welfare, Courthouse, Pueblo, Colorado, on March 28, 1972, at 9:00 A.M.

Mr. Robert Trunk, Attorney at Law, appeared in behalf of the Pueblo County Department of Public Welfare, and Mr. Joe T. Ulibarri, Attorney at Law, Pueblo County Legal Aid Services, appeared on behalf of Mr. Joseph Valdez.

Hereinafter Mr. Joseph Valdez will be referred to as the "appellant"; the Pueblo County Department of Public Welfare will be referred to as the "County Department"; and the regulations of the State Department of Social Services referred to herein are from Staff Manual, Volume IV, and shall be cited by their section number, title and effective date.

FINDINGS OF FACT

Based upon all of the evidence presented at the hearing, the Hearing Officer makes the following findings of fact:

1. The appellant applied for ADC-U and food stamp assistance on December 20, 1971. He was approved for ADC-U with a grant of $194 per month, but was denied food stamp assistance.

2. For the year 1971 the appellant, who is more than 18 years of age, was claimed by his father as a tax dependent. The father's household is not certified for food stamp assistance.

3. The appellant would be otherwise eligible for food stamp assistance except for his status as a tax dependent in 1971.

4. The appellant's household is a low-income household.

DISCUSSION AND CONCLUSIONS

Section B-4000.011—*Purpose,* effective November 1, 1971, sets forth the policy of Congress as declared in the Food Stamp Act and provides in part as follows:

> '. . . The Congress hereby finds that the limited food purchasing power of low-income households contribute to hunger and malnutrition among members of such households."

and,

> "To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade."

It seems rather clear that it was the intent of Congress to provide food stamp assistance to all low-income households so that the inhuman consequences of malnutrition could be avoided.

Section B-4020—*Eligibility Requirements,* effective November 1, 1971, provides in part as follows:

> "Assistance households will be determined to be eligible to participate in the program without regard to the income and resources of the household members. Said households must meet all other eligibility standards."

This regulation recognizes that assistance household fall in the category of low-income households without proof of that which is obvious. Such households are automatically considered eligible insofar as income and resources are concerned.

Section B-4222.4—*Rules Concerning Tax Dependents,* effective November, 1971, provides in part as follows:

> "Any household which includes a tax dependent, as above defined, will not be eligible to participate in the program unless the household claiming the tax dependent is certified as being eligible for participation in the food stamp program or food distribution program and the household

in which the tax dependent lives meets all other eligibility criteria."

The rule, in a separate portion, defines a tax dependent as:

> "For purposes of these rules, a tax dependent means a person who is 18 years of age or older, who is claimed as a tax dependent for Federal income tax purposes by parent or guardian, and who is living apart from the household of such parent or guardian. A person will be considered a tax dependent for the period claimed, and for a period of one year after the expiration of such tax period."

Unfortunately, the appellant falls squarely within this definition of tax dependent. He is 18 years of age; he was claimed by his father as a tax dependent in 1971; and the father's household is not certified for food stamp assistance. Notwithstanding the fact that he is on public welfare assistance, he must be found ineligible because he was a tax dependent and this is true even though such finding will defeat the expressed policy of Congress when it passed the Food Stamp Act.

The rules of the State Department of Social Services relating to food stamp eligibility are based upon the rules prescribed by the Food and Nutrition Service, U. S. Department of Agriculture. Those rules have been reviewed by the Hearing Officer, and when they are applied, the same result must be had. In 7 CFR 271.3(4)(d), it is stated:

> "'*Tax dependency.*' Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for federal income tax purposes by a member of a household which is not certified as being eligible for food assistance shall be ineligible to participate in the program during the tax period such dependency is claimed and for a period of one year after expiration of such tax period."

INITIAL DECISION

IT IS THEREFORE the Initial Decision of the Hearing Officer that the County Department properly applied the regulations of the State Department of Social Services when it denied food stamp assistance to the appellant.

This Initial Decision shall be effective and binding upon

the appellant and the Pueblo County Department of Public Welfare three days after the date set forth below in the Certificate of Mailing. Section 4725.2—*Decision, Notification, and Right of Appeal*, effective November 1, 1971.

STATE DEPARTMENT OF
SOCIAL SERVICES

James E. Dotson
JAMES E. DOTSON, Hearing Officer

Dated: At Denver, Colorado
April 6, 1972

CERTIFICATE OF MAILING

I certify that I have mailed a true and correct copy of the above Initial Decision of Hearing Officer to Mr. Joseph Valdez, 1114 East Sixth Street, Apartment 1, Pueblo, Colorado 81004, by depositing same in the U. S. Mail, postage prepaid, on this 7th day of April, 1972, at Denver, Colorado.

Doris R. Sumnicht
DORIS R. SUMNICHT
Secretary to the Hearing Officer
State Department of Social Services

[Title Omitted in Printing]

[Filed July 20, 1972]

AFFIDAVIT

Edward J. Hekman, being first duly sworn on oath, deposes and says that:

1. I am Administrator of the Food and Nutrition Service of the United States Department of Agriculture. Under the general direction of the Assistant Secretary of Agriculture for Marketing and Consumer Services, I am responsible for the administration of the Food Stamp Program.

2. The purpose of this affidavit is to show that the issuance of a temporary restraining order in this case would have the effect of substantially changing existing criteria of eligibility for participation in the Food Stamp Program. Contentions similar to those of the plaintiffs were given full administrative consideration and were not adopted as more fully set forth in the statement of the Assistant Secretary of Agriculture for Marketing and Consumer Services which was published in the Federal Register on October 16, 1971 (36 F.R. 20145). The regulations of which plaintiffs now complain became effective on July 29, 1971, almost one year ago, and have been implemented in all of the states which participate in the Food Stamp Program, except Vermont.

3. On April 16, 1971, there was published in the Federal Register (36 F.R. 7240) a notice of proposed rulemaking which invited the comments, suggestions, or objections of interested persons with respect to the proposed revision of the regulations governing the Food Stamp Program. The revision of the regulations was necessitated by the amendments to the Food Stamp Act of 1964 (7 U.S.C. 2011-2025) which were enacted by Public Law 91-671 (84 Stat. 2048), approved January 11, 1971. Among those amendments was the amendment in issue which made ineligible for the program "any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household." Thus, the proposed regulations included language to effectuate this change in the enabling legislation.

4. Numerous comments concerning this proposal were received. However, it was concluded that, in order to carry

out the intent of the legislation, the regulation to be promulgated would have to be substantially in the form of that issued on July 29, 1971.

5. Since publication of the revised program regulations on July 29, 1971, the Food and Nutrition Service has worked diligently, along with the agencies of the several States responsible for the administration of the program in such States to implement the various program changes, including the revised eligibility standards, required by the 1971 amendments to the Food Stamp Act of 1964. Some of the States implemented the revised eligibility standards as long ago as November 1971, and all of the States participating in the program have now put such standards into effect, except Vermont.

6. The change challenged here is only one of a number of changes in the program which have been made by all of the participating States to bring program operations into conformance with the substantially amended statute and revised regulations.

7. In connection with the merits of this action:

(a) it has not been possible, within the period of time between the filing of this action and the hearing on the plaintiffs' motion for a temporary restraining order, to obtain from the States all of the facts necessary for making a determination as to whether or not the plaintiffs, or any of them, have been properly excluded from participation in the program by a State agency under the provisions of section 5(b) of the Food Stamp Act of 1964, as amended (7 U.S.C. 2014(b)), and the program regulations issued thereunder.

(b) The action of the State agencies in denying participation in the Food Stamp Program to some of the plaintiffs under the so-called "tax dependent" provision of the Act became final some months ago, as early as November 1971.

8. The issuance of a Temporary Restraining Order would disrupt the orderly local administration of the program in each of the States involved without there having been any consideration of the merits of the litigation, and would change the status quo with respect to the plaintiffs in this action.

/s/ Edward J. Hekman
Administrator

Subscribed and sworn to before me a Notary Public in and for the District of Columbia this 19th day of July, 1972.

/s/ Sandra D. Foster
District of Columbia
Notary Public

My Commission Expires
Sept. 30, 1975

[Title Omitted in Printing]

[Filed July 31, 1972]

MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

COME NOW the defendants by their attorneys, the undersigned attorneys and respectfully moves this Court to dismiss this action or in the alternative for summary judgment on the grounds that there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law.

In support of this motion, the Court is respectfully referred to the affidavit of Edward J. Heckman, previously filed in this case as well as the attached affidavit of Howard P. Davis, both which are incorporated herein and made a part hereof together with defendants' Memorandum of Points and Authorities in support of defendants' Motion to Dismiss or in the Alternative for Summary Judgment.

Respectfully submitted,

/s/

HARLINGTON WOOD, JR.
Assistant Attorney General

/s/

HAROLD H. TITUS, JR.
United States Attorney

/s/

HARLAND F. LEATHERS

/s/

PETER J. P. BRICKFIELD
Attorneys, Department of Justice

[Title Omitted in Printing]

[Filed July 31, 1972]

AFFIDAVIT

Howard P. Davis, being first duly sworn on oath, deposes and says that:

1. In the absence of the Administrator, I am Acting Administrator of the Food and Nutrition Service of the United States Department of Agriculture. Under the general direction of the Assistant Secretary of Agriculture for Marketing and Consumer Services, I am, as Acting Administrator, responsible for the administration of the Food Stamp Program.

2. The Food Stamp Program is carried out under the provisions of the Food Stamp Act of 1964, as amended (7 U.S.C. 2011-2025). The purpose of the program is to utilize the nation's abundance of food in order to raise levels of nutrition among certain low-income households. In accordance with the statute, eligible households may exchange an amount of money determined to be a "reasonable investment" for food stamps which are of a greater monetary value. The difference between a household's "purchase requirement"—the amount of money it must pay for its coupon allotment, determined on the basis of its income—and the "coupon allotment"—the value of the food stamps it receives, determined on the basis of the number of persons in the household—is the Federal contribution in free food stamps to the food purchasing power of the household.

3. Early in January 1971 a number of amendments to the Food Stamp Act of 1964 became effective. Among the changes made at that time was the addition of the so-called "tax dependent" provision which is in issue in this case. This amendment makes any household ineligible to participate in the Food Stamp Program if the household includes a person 18 years or older who is claimed as a tax dependent by a taxpayer who is a member of an ineligible household. This change in the law, primarily intended by Congress to deny program benefits to non-needy college students, was inserted into the Food Stamp Act of 1964 by Public Law 91-671 (84 Stat. 2049). It reads as follows:

Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this Act during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. (7 U.S.C. 2014(b)).

4. The regulations governing the Food Stamp Program also contain a "tax dependent" provision similar to that added to the Food Stamp Act in 1971. The regulations provide as follows:

Tax Dependency. Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for Federal income tax purposes by a member of a household which is not certified as being eligible for food assistance shall be ineligible to participate in the program during the tax period such dependency is claimed and for a period of 1 year after expiration of such tax period. (7 C.F.R. 271.3(d)).

5. The policy of this Department, as set forth in the instructions furnished to the agencies of the several States which participate in the Food Stamp Program, reflects the provisions of the statute and the program regulations referred to in the preceeding paragraphs. In this connection, the document entitled "FNS (FS) Instruction 732-1—Food Stamp Certification," reads as follows, in section III, F:

Tax Dependent means a person who is 18 years of age or older who is claimed as a tax dependent for Federal income tax purposes by a parent or guardian and who is living apart from the household of such parent or guardian. A person will be considered a tax dependent for the period claimed and for a period of one year after expiration of such tax period. For example, if a person is claimed as a dependent in March of 1972 for the 1971 tax year, he will be ineligible until January 1973 unless the taxpayer household becomes certified for food assistance. . . .

* * *

Tax Dependent Application. When an application

shows a tax dependent who is claimed by another household which is not certified as being eligible for the Food Stamp Program or Food Distribution Program, the tax dependent household will be determined ineligible to participate in the Food Stamp Program. Under normal circumstances, a determination of tax dependency can be made from the completed Application submitted by the household.

• • •

6. As the statement in the instructions quoted above indicates, the application for participation in the program contains information with respect to the tax dependent status of member(s) of the household. FNS (FS) Instruction 732-1 requires that the State agencies use an application form substantially in conformity with Exhibit A to such instruction. Exhibit A requires that applicants respond to the following questions with regard to tax dependency:

a. Has anyone in the household been claimed as a tax dependent for Federal income taxes during the last year or this year by a person who is not living in the household?

b. If yes, give the name of the tax dependent and the name and address of the taxpayer.

c. Is the taxpayer certified to participate in the Food Stamp or Food Distribution Programs?

7. In the administration of the Food Stamp Program, this Department has, therefore, complied explicitly with the mandate with regard to tax dependency set forth in section 5(b) of the Food Stamp Act. If the information provided by an applicant household for the Food Stamp Program disclose that there is in such household a member who meets the "tax dependent" criteria established by the statute, that household is determined to be ineligible for participation in the program.

8. Section 10(e)(6) of the Food Stamp Act (7 U.S.C. 2019 (e)(6)) requires that each State agency shall provide for the granting of a fair hearing and a prompt determination thereafter to any household aggrieved by the action of a State agency under any provision of its plan of operation as it affects the participation of such household in the Food

Stamp Program. The regulations governing the program implement this statutory provision. (7 C.F.R. 271.1(o)). However, in the case of households which have initially been determined to be ineligible for participation in the program on the basis of tax dependency, there are no factual issues to be presented or challenged by the household at such a hearing, other than the issue of whether or not a member of the household has been claimed as a dependent child by a taxpayer who is not a member of a household eligible for food assistance (a fact the household, in most cases, already will have disclosed in its application). If a household states that if has such a tax dependent member, the household is, in conformity with the Food Stamp Act, the program regulations, and the instructions of FNS governing the program administration by State agencies, determined to be ineligible.

9. The Federal income tax laws provide generally that in order for a taxpayer to claim a child as a dependent, the taxpayer must have furnished over half of the child's support. A taxpayer who claims a child as a dependent must, therefore, have made a substantial contribution to the child's living expenses.

10. The legislative history of the 1971 amendments to the Food Stamp Act discloses that Congress intended to exclude tax-dependent college students from the Food Stamp Program, but the "tax dependent" provision of the statute applies likewise to households which do not include such students. While the overall purpose of the Food Stamp Act is to furnish food assistance to low-income households, it is reasonable for Congress to conclude that a taxpayer who is not needy and who claims a member of a low-income household (whether or not he is a student) as a tax dependent is in a position to provide, and has provided, financial assistance to such household. Federal resources are thereby freed for use in aiding those households which have no other sources to look to for food assistance.

11. There is nothing in the "tax dependent" provision of the Food Stamp Act or the similar provision of the program regulations which requires that household members forego their freedom to associate in order to receive food stamps. These provisions are eligibility requirements similar to the income standards of eligibility established under the program. There are many households which, on the basis of

income, would become eligible for the program if one of the breadwinners of the household were not in the household. But it could hardly be argued that, therefore, the income eligibility standards infringe on the household members' freedom to associate.

12. There is nothing in the "tax dependent" provision of the Food Stamp Act or the similar provision of the program regulations which requires that household members forego their freedom to travel in order to receive food stamps. To the contrary, section 10(c) of the Food Stamp Act (7 U.S.C. 2019(c)) and the related provision of the program regulations (7 C.F.R. 271.4(a)(6)) provide for the continuation of certification for 60 days when a participating household moves from one food stamp project area to another. Further, the program regulations (7 C.F.R. 271.1(e)) provide that no citizenship or durational residency requirement shall be imposed by any State agency as a condition of program eligibility.

13. As applied, and as a practical matter, the "tax dependent" provision of the Food Stamp Act making a household ineligible during the tax period such dependency is claimed and "for a period of one year after expiration of such tax period" is not unreasonable. For example, with respect to a household which applied for participation in the program on July 1, 1972, if a taxpayer claimed a member of such household as a dependent in April of 1972 for the tax period 1971, the household would be ineligible only through December 31, 1972. Further, it ordinarily cannot be determined at the time of certification whether or not a member of a household will be claimed at some time during the next year as a dependent for the then current tax period. If it were not for the statutory provision for exclusion "for a period of one year after expiration of such tax period," in many cases there would be no practicable means to apply the "tax dependent" exclusion. In practice, this provision may be expected actually to exclude the tax dependent household for only one year and is a necessary adjunct to the program to effectuate the policy established by Congress.

14. It is the general purpose of the Food Stamp Act to raise levels of nutrition among low-income households. It is not the policy of Congress, however, to provide food assistance to all low-income households. The 1971 amend-

ments to the Food Stamp Act (P.L. 91-671) exclude certain households from eligibility for participation in the program, even though they may be needy. In addition to "tax dependent" households, certain households which include an able-bodied adult who fails to register for employment or who refuses to accept employment are made ineligible for the program. (7 U.S.C. 2014(c)). There is no establishment of an irrebuttable presumption that all households falling within these categories are not needy. There was rather a judgment by Congress that food aid should not be extended under the Act to households which are needy because members refuse to accept available work, or to households which have other available sources of financial assistance.

15. Under the statutory provisions referred to in the preceeding paragraph, the entire household is ineligible for the program if any member thereof falls within the "tax dependent" or "work requirement" provisions. Under the Food Stamp Program, all of the members of the household are taken into consideration for, among other things, determination of household income and resources, as well as the size of the household's coupon allotment and the amount it must pay for the allotment. For program purposes, the household is considered as a unit. By statutory definition, where more than a single person is involved, a household is a group of individuals "living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common." (7 U.S.C. 2012(e)). Since the concept of "household" adopted by Congress contemplates the sharing of a common table, an approach to certification which would make ineligible only an individual member of the household would be inconsistent with the entire statutory and administrative scheme of the program. Making ineligible, because of tax dependency, only the dependent himself would mean, as a practical matter, that such person would probably share the smaller quantity of food which would be made available under the program to the balance of the household. And such ineligibility would have the anomalous result of reducing the household's purchase requirement because of the exclusion from the household's income, for program purposes, of the income of the very person who may be a major contributor to the household's budget. Therefore, the policy of determining program

eligibility on a household unit basis is not only reasonable, but is essential to program administration as contemplated by the Food Stamp Act.

16. During May 1972, the latest month for which complete statistics are available, approximately 11,850,000 persons were receiving food assistance under the Food Stamp Program.

17. No information is presently available to the Department of Agriculture on which to base an estimate of the number of households or persons otherwise eligible for the program who have been determined to be ineligible for participation because of the tax dependency provision of the Food Stamp Act.

Howard P. Davis
Acting Administrator

Subscribed and sworn to before a Notary Public in and for the District of Columbia this 27th day of July, 1972.

Sandra D. Foster
Notary Public
District of Columbia

My Commission Expires Sept. 30, 1975

[Title Omitted in Printing]

[Filed July 31, 1972]

STATEMENT OF MATERIAL FACTS AS TO WHICH DEFENDANTS' CONTEND THERE IS NO GENUINE ISSUE

1. The Food Stamp Act (7 U.S.C. 2011 *et seq.*) of 1964 established the Food Stamp Program to permit those households with low incomes to receive a greater share of the Nation's food abundance.

2. Eligibility for food stamps is and always has been on a "household" basis.

3. On January 11, 1971, the definition of eligibility for the Food Stamp Program was changed by statute. The new definition included a tax dependency provision.

4. The Uniform National Eligibility Standards as provided by the Act state:

> • • • Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period.

5. Information with respect to individuals who are claimed as a dependent child for Federal income tax purposes is provided by the applicant for Food Stamps.

6. All Applicants for Food Stamps are entitled to a Fair Hearing on factual issues concerning their eligibility.

7. Contentions similar to those of the plaintiffs were given full Administrative consideration and were not adopted as fully set forth in the statement of the Assistant Secretary of Agriculture for Marketing and Consumer Service, which was published in the Federal Register on October 16, 1971 (36FR20145). (Heckman affidavit ¶ 2).

8. The implementing regulations became effective on July 29, 1971 (Heckman affidavit ¶ 2).

9. Plaintiffs allege that they are groups of individuals

who are needy and reside in various States and jurisdictions.

10. Defendants are the Department of Agriculture and the officials thereof who are currently responsible for the administration of the Food Stamp Program.

/s/
HARLINGTON WOOD, JR.
Assistant Attorney General

/s/
HAROLD H. TITUS, JR.
United States Attorney

/s/
HARLAND F. LEATHERS
/s/
PETER J. P. BRICKFIELD
Attorneys
Department of Justice

[Title Omitted in Printing]

[Filed July 31, 1972]

Motion for Summary Judgment

Plaintiffs, pursuant to Rule 56 of the Federal Rules of Civil Procedure, upon their Complaint, their affidavits (filed with the temporary restraining order and preliminary injunction motions), their memorandum (in support of a temporary restraining order and preliminary injunction), and the oral argument presented in open Court, respectfully move for a summary judgment.

In support thereof, plaintiffs would show this Court that there are no material issues of fact in controversy in this litigation. Since neither the plaintiffs nor the defendants have any disagreement on the facts in this case, a summary judgment is appropriate.

Respectfully submitted,

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The Per Curiam Memorandum and Final Order is printed at J.S. App. A.

The Notice of Appeal is printed at J.S. App. B.

SUPREME COURT OF THE UNITED STATES

No. 72-848

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.,
APPELLANTS,

v.

LULA MAE MURRY ET AL.

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 20, 1973

☆ U.S. Government Printing Office: 1973—497-293/571

In the Supreme Court of the United States

OCTOBER TERM, 1972

No.

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL., APPELLANTS

v.

LULA MAE MURRY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the three-judge district court (App. A, *infra*) is not yet reported.

JURISDICTION

The opinion and judgment of the three-judge district court (App. A, *infra*) was entered on August 14, 1972. A notice of appeal to this Court (App. B, *infra*) was filed on September 12, 1972. On November 2, 1972, the Chief Justice extended the time for docketing the appeal to and including December 11, 1972. The jurisdiction of this Court is conferred by 28 U.S.C. 1252 and 1253.

490-578—72——1

QUESTION PRESENTED

Whether the Food Stamp Act violates the Due Process Clause of the Fifth Amendment by excluding from eligibility households that contain persons over 17 years of age who are dependents, for purposes of the federal income tax, of taxpayers not members of eligible households.

STATUTE AND REGULATION INVOLVED

Section 5(b) of the Food Stamp Act of 1964, 7 U.S.C. 2014(b), as amended by Section 4 of Pub. L. 91–671, 84 Stat. 2049–2050, provides in pertinent part:

> The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall establish uniform national standards of eligibility for participation by households in the food stamp program and no plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary. The standards established by the Secretary, at a minimum, shall prescribe the amounts of household income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility. Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. * * *

7 C.F.R. 271.3(d) provides:

> Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for Federal income tax purposes by a member of a household which is not certified as being eligible for food assistance shall be ineligible to participate in the program during the tax period such dependency is claimed and for a period of 1 year after expiration of such tax period.

STATEMENT

This action was instituted in the district court to enjoin enforcement of a 1971 amendment [1] to Section 5(b) of the Food Stamp Act of 1964, 7 U.S.C. 2014 (b), known as the "tax dependent" amendment. Under that Act, 7 U.S.C. 2011–2025, the Food and Nutrition Service of the Department of Agriculture administers a food stamp program under which, at the request of the States, low-income households are issued coupon allotments enabling them to obtain a nutritionally adequate diet at a reasonable cost to such households, with the federal government paying for the balance or bonus portion. 7 U.S.C. 2013(a), 2016(a), 2025(a); 7 C.F.R. 270.3(a). See also the declaration of policy in 7 U.S.C. 2011. The amount such a household pays towards the purchase of food stamps is determined on the basis of a sliding scale related to the household's income. 7 U.S.C. 2016(b); 7 C.F.R. 271.5.

Eligibility for food stamps is determined in all cases on a "household" basis. 7 C.F.R. 271.3(a). The 1971 tax dependent amendment declared ineligible for food

[1] Section 4 of Pub. L. 91-671, 84 Stat. 2049.

stamps "[a]ny household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household," and the household's ineligibility under that provision exists "during the tax period such dependency is claimed and for a period of one year after expiration of such tax period." A taxpayer may claim his child as a dependent if the child receives "over half of [his] support" from the taxpayer. 26 U.S.C. 152(a). But a dependency exemption is not available for children over the age of 18 unless they are students or earn less than $650 during the taxable year. 26 U.S.C. 151(e).

Appellees alleged that, while they otherwise satisfied the eligibility requirements of the Act, they had been denied food stamps pursuant to the tax dependent amendment because one or more members of their respective households, who had reached 18 years of age, had been claimed as a dependent child by a taxpayer who did not reside in an eligible household. Appellees also contended that their households did not have adequate resources to obtain a nutritionally adequate diet and that thus the tax dependent amendment effected an "arbitrary and capricious discrimination" against them. Upon cross-motions for summary judgment, a three-judge district court held that the tax dependent amendment was invalid under the Due Process Clause of the Fifth Amendment and enjoined the government from denying food stamp eligibility on the basis of that amendment. The court, viewing the purpose of the amendment as being the

denial of food stamps to non-needy college students, concluded that the amendment was overly broad because in cases of parental desertion "there is * * * no rational relationship between denial of food stamps * * * and the resources available to or provided by the father * * *" (App. A, *infra*, p. 10), and that the amendment therefore drew an irrational distinction between otherwise equally needy households.

THE QUESTION IS SUBSTANTIAL

This appeal, like *United States Department of Agriculture* v. *Moreno*, No. 72–534, probable jurisdiction noted, December 4, 1972, presents a question of the constitutionality of a 1971 amendment to the Food Stamp Act. Here, as in *Moreno*, the district court failed properly to apply the "reasonable basis" test used by this Court in adjudicating equal protection claims under public welfare statutes.

The classification of beneficiaries in the Food Stamp Act, as in other public welfare statutes, does not offend the Constitution if it has "some 'reasonable basis'." *Dandridge* v. *Williams*, 397 U.S. 471, 485. See also *Richardson* v. *Belcher*, 404 U.S. 78; *Jefferson* v. *Hackney*, 406 U.S. 535. Under the applicable "reasonable basis" test, a statutory classification " 'will not be set aside if any state of facts reasonably may be conceived to justify it'." *Dandridge* v. *Williams*, *supra*, 397 U.S. at 485. And, "it is, of course, constitutionally irrelevant whether [the] reasoning [sustaining the statute] in fact underlay the legislative decision * * *." *Flemming* v. *Nestor*, 363 U.S. 603, 612. In *Richardson*

v. *Belcher, supra,* 404 U.S. at 84, this Court emphasized its "limited function under the Constitution" in this type of case and summarized the governing standard of review as follows (404 U.S. at 84):

> If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment.

In light of these principles we submit that the classification established by Section 5(b) of the Act, as amended, is valid. The tax dependent provision disqualifies those households which Congress could reasonably assume are receiving—or are in a position to obtain—significant support from a person who himself has income above the level of food stamp eligibility.[2] Congress may exclude from eligibility in this public welfare program those persons who are likely to have alternative means of finding necessary support.[3] The

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[2] As noted above (*supra*, p. 4), a taxpayer may claim a child as a dependent only if he furnishes over one-half of the child's support, and the tax dependent amendment relies only upon the claim of dependency made by a taxpayer living in a household which is not eligible for food stamp assistance. By applying only to dependent children over the age of 17, the amendment avoids discouraging parental support of minor children.

[3] The legislative history of the tax dependent amendment reflects a congressional concern about abuses of the program by "college students, children of wealthy parents." 116 Cong. Rec. 41979 (Congressman Latta). See also 116 Cong. Rec. 41981 (Congressman Poage); 116 Cong. Rec. 41993 (Congresswoman May); 116 Cong. Rec. 42021 (Congressman Belcher). This amendment is thus a manifestation of Congress' concern that

tax dependent amendment thus provides a reasonable method of achieving the legitimate legislative purpose of providing assistance to those with the greatest likelihood of genuine need.[4]

The court below, however, struck down the statute apparently because the plaintiffs in this case—despite a taxpayer's claim of dependency as to members of their respective households—were still in need of food stamps. But the asserted need of plaintiffs in this particular case (or in the hypothetical cases mentioned by the court) is not a sufficient basis for invalidating the statutory classification, since Congress could reasonably find it to be valid and fair generally. As this Court stated in *Dandridge* v. *Williams, supra,* 397 U.S. at 485 (emphasis added):

> If the classification has some "reasonable basis," it does not offend the Constitution sim-

---

the "voluntary poor" had taken advantage of the food stamp program. Also see our jurisdictional statement in *United States Department of Agriculture* v. *Moreno*, No. 72–534, at pp. 9–10 and n. 8, which explains that the 1971 amendment to Section 3(e) of the Act appears designed to correct a similar abuse. Congress' concern about program abuses is also reflected in the requirement in Section 5(c) of the Act, 7 U.S.C. 2014(c), added in 1971, that most able-bodied persons between the ages of 18 and 65 (with the exception of mothers of dependent children, bona fide students, and certain others) register for and accept work as a mandatory precondition to the eligibility of their respective households.

[4] Moreover, since a claim of dependency by a taxpayer might not be known until the filing of his return in the subsequent year, the disqualification during the one-year period after the expiration of the earlier tax period insures that this provision can be given meaningful enforcement.

ply because the classification "is not made with mathematical nicety or *because in practice it results in some inequality.*" * * * [5]

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

HARLINGTON WOOD, JR.,
Assistant Attorney General.

MORTON HOLLANDER,
WILLIAM KANTER,
Attorneys.

DECEMBER 1972.

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[5] The court's characterization of the provision as creating an "irrebuttable presumption contrary to fact" means, we assume, nothing more than that the classification here rests upon a rationale which, in the court's view, does not apply to these particular plaintiffs. As this Court's opinion in *Dandridge* makes clear, however, the rationale which sustains a statute under the "reasonable basis" test need not apply to all possible members of the challenged class, so long as it reasonably applies to the class in general. Thus, in *Dandridge* this Court upheld a welfare provision which disfavored large families because of the state's interest "in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor" (397 U.S. at 486), even though "no family members of any of the named plaintiffs in [that case were] employable" (*ibid.*, n. 20).

The court below apparently overlooked this consideration, erroneously relying on cases involving encroachment upon fundamental rights (*Carrington* v. *Rash*, 380 U.S. 89, and *Stanley* v. *Illinois*, 405 U.S. 645), where far greater precision in classification has been required. In public welfare legislation, however, such precision in classification is often not practicable and, in any event, is not constitutionally required. See *Jefferson* v. *Hackney*, *supra*, 406 U.S. at 546–547.

APPENDIX A

[Filed August 14, 1972, James F. Davey, Clerk]

United States District Court for the District of Columbia

C.A. No. 1412–72

LULA MAE MURRY, ET AL., PLAINTIFFS

v.

U.S. DEPARTMENT OF AGRICULTURE, ET AL., DEFENDANTS

PER CURIAM MEMORANDUM AND FINAL ORDER

A three-judge Court has been convened pursuant to 28 U.S.C. §§ 2282 and 2284 to consider the Constitutionality of the "tax dependent" Amendment to the Food Stamp Act (7 U.S.C. § 2014(b)). This Amendment, effective January, 1971, provides in pertinent part:

> "Any household which includes a member who has reached his eighteenth birthday and is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period."

Plaintiffs, as proper representatives of households adversely affected by this Amendment, brought a class action seeking an injunction against continued enforcement of the Amendment and its implementing

regulations. There are no facts in dispute and the issues have been fully briefed and argued.

The primary and announced purpose of the Amendment, as defendants acknowledge, was to deny benefits of the Food Stamp Program to non-needy college students. The Amendment, however, goes far beyond this and its operation is inflexible. Households containing no college student, that had established clear eligibility for Food Stamps and which still remain in dire need and otherwise eligible are now denied stamps if it appears that a household member 18 years or older is claimed by someone as a tax dependent. The legitimacy of the claimed dependency, the amount of support, if any, received by the household member, or the continued *bona fide* needs of the impoverished household are not considered. Where, as may frequently be the case, the claimed tax dependency is made by an absent father no longer a member of the household, there is, for example, no rational relationship between denial of food stamps to the deserted, destitute household and the resources available to or provided by the father claiming dependency. The result is the same if the father, claiming dependency, does so without legal justification in that he contributes nothing to the claimed dependent. The arbitrary result is compounded by the Amendment's requirement that ineligibility continue a calendar year beyond the year in which dependency is claimed.

Assuming the legitimacy of the Congressional purpose, the Amendment wholly missed its target. By creating an irrebuttable presumption contrary to fact the Amendment classifies households arbitrarily along lines that have no rational relationship to the statutory scheme or the Amendment's apparent purpose. It creates a classification which denies similar treatment

to all persons similarly situated and is, on its fact [sic] and by its operation as established in this record, grossly unfair. Thus, there is both a denial of due process and of equal protection. *Schlesinger* v. *Wisconsin,* 270 U.S. 230 (1926); *Carrington* v. *Rash,* 380 U.S. 89 (1965); *Stanley* v. *Illinois,* 40 U.S.L.W. 4371 (U.S., April 3, 1972); *Royster Guano Co.* v. *Virginia,* 253 U.S. 412 (1920); *Bolling* v. *Sharpe,* 347 U.S. 497 (1954); *Reed* v. *Reed,* 404 U.S. 71 (1971).

Defendants' reliance on *Dandridge* v. *Williams,* 397 U.S. 471 (1970), is misplaced. Equal protection questions must be resolved on a factual basis and *Dandridge* involved nothing approaching the sweeping, arbitrary effect of this challenged Amendment.

The "tax dependent" Amendment to the Food Stamp Act violates the Fifth Amendment to the Constitution and its further enforcement and implementation by defendants is permanently enjoined.

SO ORDERED

ROGER ROBB,
Judge, U.S. Court of Appeals for the D.C. Circuit,

GEORGE L. HART, JR.,
Judge, U.S. District Court.

GERHARD A. GESELL,
Judge, U.S. District Court.

Date: August 14, 1972.

APPENDIX B

[Filed September 12, 1972, James F. Davey, Clerk]

United States District Court for the District of Columbia

LULA MAE MURRY, ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL., DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given this 12th day of September, 1972, that the defendants hereby appeal to the Supreme Court of the United States from the judgment of this Court entered on the 14th day of August, 1972, in favor of plaintiffs against said defendants. This appeal is taken pursuant to 28 U.S.C. §§ 1252, 1253 and 2101.

HAROLD H. TITUS, JR.,
United States Attorney.
JOHN A. TERRY,
Assistant United States Attorney.
JOHN J. MULROONEY,
Assistant United States Attorney.

U.S. GOVERNMENT PRINTING OFFICE: 1972

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-848

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL., APPELLANTS

v.

LULA MAE MURRY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLANTS

OPINION BELOW

The opinion of the three-judge district court (J.S. App. A) is reported at 348 F. Supp. 242.

JURISDICTION

The judgment of the three-judge district court (J.S. App. A) was entered on August 14, 1972. A notice of appeal to this Court (J.S. App. B) was filed on September 12, 1972. On November 2, 1972, the Chief Justice extended the time for docketing the appeal to and including December 11, 1972. The juris-

dictional statement was filed on December 8, 1972, and probable jurisdiction was noted on February 20, 1973. The jurisdiction of this Court rests on 28 U.S.C. 1252 and 1253.

QUESTION PRESENTED

Whether the provision of the Food Stamp Act excluding from participation in the food stamp program households containing adult dependents of a taxpayer who is not himself a member of an eligible household is constitutional.

STATUTES AND REGULATIONS INVOLVED

Section 5(b) of the Food Stamp Act of 1964, 7 U.S.C. 2014(b), as amended by Section 4, Pub. L. 91–671, 84 Stat. 2049, provides in pertinent part:

> The Secretary, in consultation with the Secretary of Health, Education and Welfare, shall establish uniform national standards of eligibility for participation by households in the food stamp program and no plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary. The standards established by the Secretary, at a minimum, shall prescribe the amounts of household income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility. Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible

household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. * * *

7 C.F.R. 270.2(q) provides:

> "Dependent" for the purpose of § 271.3 (d) of this subchapter, means a person claimed as a dependent for Federal income tax purposes by a parent or guardian and living apart from the household of such parent or guardian.

7 C.F.R. 271.3(d) provides:

> Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for Federal income tax purposes by a member of a household which is not certified as being eligible for food assistance shall be ineligible to participate in the program during the tax period such dependency is claimed and for a period of 1 year after expiration of such tax period.

Section 151(e) of the Internal Revenue Code of 1954, 26 U.S.C. (Supp. I) 151(e), as amended by Section 201(b)(1), Pub. L. 92–178, 85 Stat. 510, provides in pertinent part:

> An exemption of $750 [shall be allowed] for each dependent (as defined in section 152)—
>
> (A) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $750, or
>
> (B) who is a child of the taxpayer and who (i) has not attained the age of 19 at the close

of the taxable year in which the taxable year of the taxpayer begins, or (ii) is a student. * * *

Section 152(a) of the Internal Revenue Code of 1954, 26 U.S.C. 152(a), provides in pertinent part:

> * * * the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer * * *:
>
> [a] A son or daughter of the taxpayer * * *.

STATEMENT

Appellees, challenging the constitutionality of the 1971 amendment to Section 5(b) of the Food Stamp Act of 1964, brought this suit for declaratory and injunctive relief in the United States District Court for the District of Columbia. The 1971 amendment, added by Section 4 of Pub. L. 91-671, 84 Stat. 2049, declared ineligible for food stamps "[a]ny household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household";[1] the household is ineligible "during the tax

[1] A "dependent" under this section is defined by regulation as a "person claimed as a dependent for Federal income tax purposes by a parent or guardian and living apart from the household of such parent or guardian." 7 C.F.R. 270.2(q). Under the pertinent provisions of the Internal Revenue Code, a taxpayer may claim his child as a dependent, and thus obtain an exemption of $750, if the child receives "over half of [his] support" from the taxpayer. 26 U.S.C. 151(e) and 152(a). But a dependency exemption is not available for children over the age of 18 unless they are students or earn less than $750 during the taxable year. 26 U.S.C. 151(e).

period such dependency is claimed and for a period of one year after expiration of such tax period."[2] Appellees alleged that they were food stamp applicants who, although satisfying all other eligibility requirements of the Act, had been denied food stamps pursuant to the 1971 amendment because one or more members of their respective households, over the age of 17, had been claimed as a dependent child by a taxpayer who did not himself reside in a household eligible for food stamp assistance.[3]

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[2] Pursuant to the Court's order noting probable jurisdiction, this case will be heard together with No. 72-534, *United States Department of Agriculture* v. *Moreno*, which involves the constitutionality of another provision of the 1971 amendments. Our brief in *Moreno* describes (at 4-5) the basic operation of the food stamp program administered under the Act.

[3] The allegations of at least some of the appellees furnish an uncertain basis for the presentation of the constitutional issue. Appellee Murry claims that she was denied food stamps, at least in part, because her grandson was claimed as a dependent by his grandfather (Mot. to Aff. 3); but the 1971 amendment is concerned solely with dependency claims asserted by parents or guardians (and Murry does not allege that the grandfather is his grandson's guardian). See 7 C.F.R. 270.2(q). Appellees Valdez, Broderson, and Shultz allege facts which suggest that they were claimed as dependents on account of support which they received prior to establishing their present households (App. 54, 56, 58); as we read the statute, it is concerned only with dependency claims made with respect to a taxable year during which the dependent in fact resided in the household seeking food stamp assistance. Thus if those appellees were in fact denied food stamp assistance, that denial may have been erroneous; in any event, they have not established standing to challenge the constitutionality of the Act. Furthermore, all appellees other than Valdez, Broderson, and Schultz allege facts which strongly imply that the dependency claims resulting in their ineligibility for food stamps were invalid; these appellees state, expressly or implicitly, that the taxpayer making the

A three-judge district court was convened pursuant to 28 U.S.C. 2282 and 2284. Upon cross-motions for summary judgment, the court declared Section 5(b), as amended, to be invalid under the Due Process Clause of the Fifth Amendment and enjoined the government from denying food stamp assistance on the basis of the 1971 amendment.

SUMMARY OF ARGUMENT

The standard of review for the constitutionality of the statutory classification challenged by appellees is the "reasonable basis" test. *Jefferson* v. *Hackney,* 406 U.S. 535; *Richardson* v. *Belcher,* 404 U.S. 78; *Dandridge* v. *Williams,* 397 U.S. 471. The fact that the classification may indirectly affect appellees' choice of living arrangements does not make the higher "compelling governmental interest" standard applicable. *E.g., Eisenstadt* v. *Baird,* 405 U.S. 438.

This statutory classification has a reasonable basis. The provision disqualifies those households in which young adults have received significant financial support from a parent. By so restricting the availability of food stamps, Congress has eliminated a serious abuse and thereby reserved the expenditure of public welfare funds for the most needy.

---

dependency claim provided less than the necessary one-half of the dependent's support (App. 29, 32, 34–35, 48, 50). As is discussed further below (note 6, *infra*), the statute can be read as excluding only those households with respect to which a valid dependency claim has been made, in which case all appellees would merely have been erroneously denied food stamp assistance and would therefore lack standing to challenge the constitutionality of the Act.

ARGUMENT

THE PROVISION OF THE FOOD STAMP ACT EXCLUDING HOUSEHOLDS CONTAINING ONE OR MORE ADULT DEPENDENTS OF A TAXPAYER WHO IS NOT HIMSELF A MEMBER OF AN ELIGIBLE HOUSEHOLD IS CONSTITUTIONAL

A. THIS WELFARE CLASSIFICATION MUST BE UPHELD IF IT HAS A REASONABLE BASIS

As we have shown in our brief in the companion case of *United States Department of Agriculture* v. *Moreno* (see note 2, *supra*), a welfare classification must be upheld if it furthers any reasonable purpose which may be attributed to the legislature (Br. 8–9, 11–12). And see *Jefferson* v. *Hackney*, 406 U.S. 535; *Richardson* v. *Belcher*, 404 U.S. 78; *Dandridge* v. *Williams*, 397 U.S. 471.[4]

Appellees contend (Mot. to Aff. 15–19) that the classification established by Section 5(b) of the Act,

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[4] Appellees, relying primarily on cases decided prior to *Bolling* v. *Sharpe*, 347 U.S. 497, contend (Mot. to Aff. 7–12) that by "creating * * * an irrebuttable and erroneous presumption" (Mot. to Aff. 8) the statute here at issue results in a denial of due process independently of any question concerning equal protection. But the fact that the classification rests upon certain legislative presumptions does not raise a separate issue of due process as such; the issue is simply whether the presumptions are reasonable, and analytically this is an issue of equal protection. By raising a question of due process, narrowly conceived, appellees apparently mean to claim the right to an evidentiary hearing to determine a fact not germane to eligibility under the Act, *i.e.*, whether despite the presence of tax dependents a household is still needy. Due process does not require a hearing with respect to issues unrelated to eligibility. See *Mills* v. *Richardson*, 464 F. 2d 995, 1001 (C.A. 2).

as amended, impinges upon their fundamental rights of privacy and association and therefore may be upheld only if it serves a compelling governmental interest. This claim is answered generally in our brief in *Moreno* (at 9–11), where we show that welfare classifications merely incidentally or tangentially affecting important rights are valid if they have a reasonable basis. And see *Eisenstadt* v. *Baird*, 405 U.S. 438, and *Dandridge* v. *Williams*, *supra*, invoking the "reasonable basis" test in cases involving classifications impinging upon privacy and associational rights. As in *Moreno*, the primary interest asserted here is that of receiving food stamps. Although that interest is significant to the appellees, it does not involve a fundamental right. *E.g.*, *Jefferson* v. *Hackney*, *supra*. The traditional minimal rationality standard for equal protection cases therefore applies here.

In the context of this case we further point out that appellees' arguments concerning privacy and associational rights are in fact addressed not so much to the particular classification involved here as to the fact that food stamp eligibility is determined on a household rather than an individual basis. The right appellees assert is the right to live with whomever they choose, without any adverse effect on their privilege of receiving food stamps; and the very determination of food stamp eligibility on a household basis impinges upon this "right," for it results in the denial of food stamps to low-income persons who

choose to live with persons with somewhat higher incomes.

Yet there are sound reasons of administration for aggregating the resources and expenses of all members of the household; the assessment of need can properly be made only by looking at the household as an entity. A provision excluding from eligibility a household which included a person with substantial non-income producing assets (*e.g.*, a valuable diamond necklace) would have a rational relationship to the purposes of the Act and therefore satisfy constitutional requirements of due process and equal protection, even though it seriously impinged upon the associational "right" appellees claim here. Similarly, as we will now show, the classification here in question also has a rational relationship to the purposes of the Act, for it excludes from eligibility only those households which include one or more persons who may be fairly presumed to receive or have available significant parental support.

B. THE EXCLUSION OF HOUSEHOLDS CONTAINING ONE OR MORE ADULT DEPENDENTS OF A TAXPAYER WHO IS NOT HIMSELF A MEMBER OF AN ELIGIBLE HOUSEHOLD HAS A REASONABLE BASIS

The apparent rationale of the 1971 amendment to Section 5(b) is as follows: (a) there was concern that many households, which received, or had available to them, outside support, abused the food stamp program by concealing that support or by electing to live off public resources (*i.e.*, food stamps) rather

than their available private resources;[8] (b) the major instances of such abuse were considered to be those cases where the outside support was sufficiently great to entitle the person providing the support to claim a dependency exemption; (c) such outside support was presumed, however, to be insubstantial or limited when it was provided by a person who was himself a member of a low-income household; (d) it was determined that absent parents should not be discouraged from providing support for their minor children; (e) therefore, eligibility was denied to households which include persons over 17 years of age who are claimed as dependents by a taxpayer residing in a household which is not itself eligible for food stamp assistance. In short, by amending Section 5(b) Congress was merely attempting to close a loophole which had led to abuse, and the classification fashioned by Congress was closely tailored to the elimination of that abuse.

The purpose of the food stamp program is to "raise levels of nutrition among low-income households." 7 U.S.C. 2011. The program was not intended to provide food for college students and other young adults at a time when they receive support from their parents or can look to their parents for financial assistance; it was not intended to substitute federal

[8] The legislative history of the amendment reflects a congressional concern about abuses of the program by "college students, children of wealthy parents." 116 Cong. Rec. 41979 (Congressman Latta). See also 116 Cong. Rec. 41981 (Congressman Poage); 116 Cong. Rec. 41993 (Congresswoman May); 116 Cong. Rec. 42021 (Congressman Belcher).

for parental support. Congress could, consistently with the basic purpose of the Act, legitimately terminate food stamp assistance to these young adults and their households. It was well within the discretion of Congress to restrict the expenditure of public funds for the benefit of only those households having no significant alternative source of support; it is not the function of the judiciary "to second-guess * * * officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge* v. *Williams,* 397 U.S. 471, 487.

Furthermore, the means chosen by Congress were rationally related to its legitimate goal. A parent is entitled to claim his child as a dependent only if he provides over one-half of the child's support. Thus the amendment does not affect households whose members receive insignificant parental support. Furthermore, by disregarding dependency claims made by taxpayers who themselves live in low-income households, the statutes renders ineligible only those households which are in a position to obtain assistance from relatively affluent parents. Thus, the statute is tailored to exclude from eligibility only those households which include one or more young adults who may be fairly presumed to receive significant parental support.

Appellees state (Mot. to Aff. 19) that the 1971 amendment has deprived "thousands of needy households" of food stamp assistance. However, they show no basis for this bald factual assertion and there is

none in the record. In fact, most of the appellees appear to have been denied food stamps because a taxpayer has made an invalid dependency claim (see note 3, *supra*). In light of the civil and criminal penalties to which such a taxpayer is subject (see, *e.g.*, 26 U.S.C. 6651, 6653, 7201 and 7206(1)), Congress could properly assume that false dependency claims would be comparatively unusual; our income tax system relies primarily on honest self-reporting by taxpayers, and it would not have been unreasonable for Congress to assume that the great majority of taxpayers would be honest in claiming dependency exemptions.[8]

Where a taxpayer in a non-poor household has validly claimed a dependency exemption with respect to a child living elsewhere, the child and his household are in fact receiving substantial outside assistance; only in the unusual situations where invalid

[8] The statute is in fact ambiguous with respect to whether an invalid dependency claim renders the alleged dependent's household ineligible for food stamp assistance. The court below interpreted the statute as excluding households with respect to which invalid dependency claims had been made, and the court's holding that the statutory classification is arbitrary apparently rests heavily on this interpretation (see J.S. App. A, 10). We believe that the court's reading of the statute is correct; that interpretation has been the administrative construction as well. However, the contrary interpretation—that only valid dependency claims result in the exclusion of households from eligibility—does not do violence to the statutory language. Thus this Court should construe the statute as relating only to valid claims if that construction is necessary to preserve the statute's constitutionality. Cf. *Kent* v. *Dulles*, 357 U.S. 116. And as we note above (note 3, *supra*), such a construction would appear to deprive all appellees of standing in this case.

dependency claims have been made is the alleged dependent's household likely to be needy.[7] The fact that the statutory classification may in some few cases result in the denial of food stamp assistance to needy households does not, however, make the statute unconstitutional. A classification "does not offend the Constitution simply because [it] 'is not made with mathematical nicety or because in practice it results in some inequality.'" *Dandridge* v. *Williams, supra,* 397 U.S. at 485. And see our brief in *Moreno* (at 17–18).

In summary, Congress may legitimately consider the probability of alternative sources of financial assistance in setting criteria for the allocation of public welfare benefits, and Congress has acted reasonably in determining that a non-poor parent's claim of a dependency exemption for his adult child reflects actual assistance in an amount which would warrant the child's disqualification from a welfare program which is only intended for the most needy.

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[7] There may additionally be some instances where the one year carry-over provision of the statute results in the exclusion of actually needy households from eligibility. The court below relied in part on this possibility in finding the statute arbitrary (J.S. App. A, 10). However, the carry-over is the only practical means by which the basic statutory exclusion can be enforced: income tax returns are only filed annually, with respect to a taxable year already terminated. Furthermore, a claim of dependency cannot be definitely established until the end of the year during which support is furnished. In these circumstances, disqualification during the period following the taxable year is necessary in order that the underlying legislative purpose be carried out. And in providing such a carry-over, Congress could reasonably presume the continuation of an existing pattern of parental support.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-848

UNITED STATES DEPARTMENT OF AGRICULTURE, *et al.*,

Appellants,

v.

LULA MAE MURRY, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

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BRIEF FOR APPELLEES

QUESTIONS PRESENTED

1. Whether the appellees have standing to challenge the Constitutionality of the Food Stamp Act's tax dependency provision.

2. Whether the discriminatory tax dependency provisions in the Food Stamp Act and regulations—which deny essential food aid on the conclusive but erroneous presumption that households, containing a "tax dependent" of the previous year, have access to nutritional adequacy—contravenes appellees' rights to equal protection insofar as the provisions are arbitrary and capricious and have no reasonable relationship to the achievement of permissible governmental purposes, thereby violating the Fifth Amendment to the United States Constitution.

3. Whether the tax dependency provisions—which deny food stamp aid to all members of households which contain a person who was written off as a "tax dependent" for the previous tax year—violate appellees' rights to procedural due process by establishing a conclusive, irrebuttable and erroneous presumption that appellees are neither poor nor in need of food relief thereby violating the Fifth Amendment to the United States Constitution.

STATEMENT OF THE CASE

The Food Stamp Act [7 U.S.C. §§2011 *et seq.*] was passed by Congress in 1964 [P.L. 88-525 (August 31, 1964), 78 Stat. 703] and substantially amended in 1971 [P.L. 91-671 (Jan. 11, 1971), 84 Stat. 2048]. The Program established under that Act constitutes the Federal Government's most far-reaching effort to remedy the widespread conditions of undernutrition and hunger in this nation. As reflected in the Act's Declaration of Policy [7 U.S.C. §2011], Congress sought to raise levels of nutrition among low-income households, thereby permitting them to obtain a decent diet. Today, the Food Stamp Program provides its twelve million participants

with their only hope of escaping the ravages of hunger and malnutrition.

The operation of the Food Stamp Program is as follows: a poverty-stricken household is charged a certain amount of money in exchange for which it receives food stamps of greater value. The difference between the value of the stamps received—the coupon allotment—and the cost of the stamps is a bonus which provides recipients with a direct increase in food purchasing power. The stamps may be used to purchase domestic food, other than liquor and tobacco, at grocery stores certified by the Agriculture Department to sell food for stamps.

In recognition of the fact that many impoverished non-welfare recipients need food assistance in order to sustain their health, and because welfare recipients are not legally entitled to obtain their full nutritional and other needs through the public assistance programs [see *Rosado v. Wyman*, 397 U.S. 397, 413-415 (1970); *Dandridge v. Williams*, 397 U.S. 471, 478-480, 482-483 (1970); *Jefferson v. Hackney*, 406 U.S. 535, 539-545 (1972)], Congress established the Food Stamp Program to provide indigents with their important food needs. Due to the restrictive coverage and benefit levels of the public assistance programs, Congress sought to assure that needy households would be guaranteed adequate nutrition through the Food Stamp Program: Congress required that "[t]he face value of the coupon allotment which state agencies shall be authorized to issue to any households certified as eligible to participate in the food stamp program shall be in such amount as the Secretary determines to be the cost of a nutritionally adequate diet. . .' [7 U.S.C. §2016(a)]

Participation in the Food Stamp Program has been always on a household basis. Since the passage of P.L.

91-671, household eligibility in the Program has been based on two criteria:[1] (1) the household must be *currently needy* [7 U.S.C. §2014(b); 7 C.F.R. §§271.3(c) and 271.4(a)(4)]; and (2) certain members of the household must register for, and accept, suitable work. [7 U.S.C. §2014(c); 7 C.F.R. §271.3(e)] If a household is *currently needy* and complies with the work requirement, then such a household is entitled to food stamp relief. [7 U.S.C. §2013(a)]

The tax dependency provision here at issue is contained in, and is a part of, the need eligibility requirement of the Program. [7 U.S.C. §2014(b)] As is set forth more fully below, Congress conclusively, irrebuttably and erroneously determined that statutory "tax dependents" have current access to sufficient income in order to obtain a nutritionally adequate diet. Even the sparse legislative history on the tax dependency provision unequivocally verifies that the provision was designed as part of the resource and "income eligibility" standards of the Program [House Report No. 91-1402, 91st Cong., 2d Sess. (1970), at 8; see, also, Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 16, 1970) at H 11861], and Congress irrebuttably determined that statutory "tax dependents" have access to nutritional adequacy. An examination of the provision, however, shows how

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[1] Section 5 of the Act sets forth in the nationwide household eligibility criteria for the Program. [7 U.S.C. §2014] Subsection (a) sets forth the overall policy for the two specific eligibility requirements: "... participation in the food stamp program shall be limited to those households whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet." Subsection (b) then sets forth the need eligibility criteria, including the provision here at issue, and subsection (c) sets forth the work eligibility requirement.

erroneous that irrebuttable presumption is and unequivocally demonstrates that the provision is irrationally related to—and completely frustrates—the Program's purpose of providing food aid to *households which are currently needy*.

The tax dependency provision of the Food Stamp Act states:

> . . . Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. . . . [7 U.S.C. §2014(b)]

Under the literal terms of the provision, therefore, a "tax dependent's" entire household is eliminated from Food Stamp Program eligibility for two distinct periods of time: (1) during the tax year for which the dependency was claimed; and (2) during the twelve months following that tax year. During these periods of time, the statute conclusively presumes that the "tax dependent's" household is not needy and has access to nutritional adequacy. *In practical operation, however, even under the best of all circumstances*, the provision is wholly unrelated to a household's current needs and is, under optimum conditions, only tenuously related to a household's past needs. An analysis of the provision's operation is illustrative.

A tax dependency claim for a particular year does not eliminate a "dependent" household from Food Stamp Program participation during that year. This is because, as the appellants admit, "most people . . . file their income tax in April or some time in the beginning of the year *for*

the previous tax year." [See Appendix B to this Brief, at 17b] (emphasis added) Therefore, when the dependency claim is filed (e.g. in April 1972 for tax year 1971), the year for which the dependency claim is made already has passed, and the claim has no bearing on the "dependent" household's eligibility during that year: the "dependent's" household already will have received its food stamps for that year. With regard, then, to the first period of statutory Program ineligibility—"during the tax year such dependency is claimed" [7 U.S.C. §2014(b)]—the provision operates as an entire nullity; its operation is wholly unrelated to present needs and circumstances. *The provision operates to exclude "dependent" households only during the second period of statutory Program ineligibility—the year after the expiration of the tax period for which the dependency was claimed.*

Contrary to the Program's purpose of satisfying *current food needs,* therefore, the tax dependency provision operates exclusively on the basis of circumstances during the *past tax year.*[2] Like all of the appellees herein, the provision excludes indigents from Food Stamp Program participation only during the one year

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[2]In contrast to the tax dependency provision, the Program's entire operation is based on households' current status and need. Short certification periods are established so that eligibility can be determined on a flexibility reliable and current basis. [7 C.F.R. §271.4(a)(4)] As a result, income eligibility is determined on a current basis as is resource eligibility. Consequently, a household that was not poor in the previous year, currently is entitled to food stamp aid if it is presently impoverished. Similarly, the work eligibility provision is based on household members' current compliance with the work requirement; even if a household member wrongfully refused a job in the past, if such member presently complies with the requirement, the household is eligible for food stamps. [7 C.F.R. §271.3 (e)(2)(i)]

after the period for which the tax dependency was claimed. Clearly, therefore, the provision operates wholly without regard to present circumstances and has no relationship to any assessment of a household's current food needs.

Not only is the tax dependency provision unrelated to the Program's purpose of fullfilling present economic and nutritional needs, but the provision is, at best, only tenuously related to the determination of a household's past impoverished circumstances. The reasons for this are clear. In order to claim a person as a "tax dependent", a taxpayer need not provide the "dependent" with any minimum amount during the tax year; to make a legitimate dependency claim, the taxpayer need merely provide the "dependent" with over one-half of said "dependent's" annual income during the previous tax year, regardless of amount. [26 U.S.C. §§151(e) and 152(a)] Even though such support might be pitifully small, if that amount is more than one-half of the "dependent's" annual income, then the dependency claim legitimately can be taken.

For non-students, the provision has absolutely no relation to the determination of their past needs, let alone the past or present needs of their entire household. By definition, a non-student "tax dependent"—who is not blessed with sufficient parental resources to go to college—is, based on his own income, poor: he cannot be claimed as a "dependent" unless his income is less than $750 a year. [26 U.S.C. §§151(e) and 152(a)] Consequently, even if his parent provides him with more than half of his income, there is a substantial likelihood that the non-student "dependent" is still needy.[3] Neverthe-

[3] *Even if a non-student "dependent" made the maximum amount permissible* while retaining dependency status under the Internal Revenue Code, there would still be a substantial likelihood

less, the non-student "dependent's" household is entirely excluded from Food Stamp Program participation during the year after the period for which the dependency claim was made.

The tax dependency provision's failure to relate even to a household's past needs is further manifested by the minimum age that a "dependent" must have for the provision to operate. To be denied food stamp aid as a result of the provision, a "dependent" must be 18 years of age or older. But, contrary to the alleged thrust of the tax dependency provision, a "dependent's" attainment of 18 years of age or more has an inverse relationship to his ability to obtain adequate income and food resources from the taxpayer. This is because, as is set forth more fully below, most states—upon a child's eighteenth birthday—relieve the parents of their child support

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that the "dependent's" household is poor. Even under those optimum conditions, a parent need only to provide his child with $751 during the previous tax year in order to claim said child as a "dependent". Under those circumstances, the "dependent"—even if he lives alone—still would be deemed poor under the Food Stamp Program; if he lived with others, the household's income would likely be substantially below the need eligibility standards of the Program. Those standards currently are as follows [37 Fed. Reg. 7724 (April 19, 1972)]:

Number in Household	Annual Income
1	$2136
2	2796
3	3684
4	4476
5	5280
6	6084
7	6876
8	7680
each additional person	+636

obligations. [See Appendix A to this Brief.] Indeed, *while a majority of the states relieve parents of their child support obligations upon the child's eighteenth birthday, every state relieves parents of their general child support obligations upon the child's twenty-first birthday.* [*Id.*] To conclusively presume, therefore, that the entire "tax dependent's" household is not needy during the one year after the period for which the tax dependency claim was made—where the "dependent" himself, let alone the rest of his household, is unable to enforce any support obligation, and where the dependency claim merely implies that the "dependent" received over half of his support in the previous year from the taxpayer—flies completely in the face of reality.

Under the provision here at issue, however, a tax dependency claim for the previous year serves as a complete bar to Food Stamp Program participation by the "dependent's" household. No evidence may be adduced by members of the "dependent's" household to demonstrate, either at the application stage or at a requested hearing thereafter, that they are poor, undernourished and without access to sufficient resources to obtain adequate nutrition. [Affidavit of defendant-appellant Howard P. Davis; Appendix, at 83; See Appendix B to this Brief, at 22b-23b] Instead, the provision conclusively, irrebuttably and erroneously presumes that a household containing a "dependent" (of the previous year) is not presently needy even if household members can convincingly demonstrate that: (1) the taxpayer made a fraudulent dependency claim; (2) the support provided the "tax dependent" is so minimal as to be wholly insufficient "to purchase a nutritionally adequate diet" [7 U.S.C. §2014(a); see, also, 7 U.S.C. §§2011, 2013(a) and 2016(a)]; (3) the taxpayer presently is

unable or unwilling to contribute to the "dependent" even though contributions were made in the previous year; (4) the taxpayer indicated to the Internal Revenue Service and the Food Stamp Office that he will not file a dependency claim this year;[4] or (5) the members of the "dependent's" household receive absolutely or virtually no benefit from the contributions by the taxpayer (either because the contributions are made solely to and for the "dependent" or because the contributions to the "dependent" are so small that they cannot be apportioned to other household members).

The tax dependency provision's effect on the indigent plaintiff-appellees has been most harmful. Plaintiff-appellees are all members of needy households, finan-

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[4] Appellants seek to rationalize the inflexible one-year ineligibility carry-over by inferring that it is "the only practical means" by which to determine whether a tax dependency claim will be taken during that carry-over year. [Appellants' Brief, at 13, n. 7] Their rationalization, however, as will be demonstrated more fully hereinafter, is belied by the actual operation of the provision. Even at the end of the carry-over year (i.e. December 31), the taxpayer has not completed his income tax papers. Consequently, by the end of the carry-over year, Food Stamp Program administrators still will be unable to determine whether an actual dependency claim will be made for that year and, therefore, whether the tax dependency provision should operate. Moreover, since the applicant household's word is taken at face value (when a member thereof indicates that he or she was written off as a "dependent" for the previous tax year) [see Appendix B to this Brief, at 22b-23b], there is no reason why that household's word cannot be accepted about its likely current dependency status or, in fact, whether it has actual access to sufficient resources to obtain a nutritionally adequate diet. The statutory provision, however, is rigid and inflexible, and the former "dependent" is unable to adduce any evidence—at any stage of the administrative process—about his discontinued dependency status or his household's current impoverished circumstances.

cially eligible for food stamp relief. They comprise both public assistance and non-welfare households that would be ablt to participate in the Food Stamp Program but for the fact that their households contain one or more persons who were "tax dependents" in the previous year. They, therefore, have been denied food stamps despite their inability "to purchase a nutritionally adequate diet" [7 U.S.C. §2014(a); see, also, 7 U.S.C. §§2011, 2013(a) and 2016(a)], and despite the fact that their status as members of a former "dependent's" household results in no appreciable outside sources of income with which they can obtain such a diet.

Appellee Lula Mae Murry, for example, is a 50 year old mother residing in Bessemer, Alabama. Her household consists of five persons: appellee Murry, her two sons, and her two grandchildren. Mrs. Murry's entire monthly income is $57.50: two bi-weekly checks of $15 (or $32.50 per month) and payment of her $25 monthly rent bill. (The current monthly income eligibility criterion in the Food Stamp Program for a five-person household is $440 [37 Fed. Reg. 7724].) These funds come from her ex-husband as court-ordered child support for her sons. Appellee Murry's monthly expenditures for utilities, heat, medical bills, transportation, laundry, school supplies, clothing, hygienic needs, and food far exceed her monthly income. For the past seven years, she received food stamps in order to meet her household's substantial nutritional requirements; she received $128 in food stamps at a cost of $11, thereby obtaining $117 in monthly food benefits. Food stamp assistance was the only means with which appellee Murry could provide her household with a subsistence diet.

In April, 1972, appellee Murry was denied food stamp relief. She was informed that this aid was no longer

available because her ex-husband had claimed her (and his) two sons and one grandson as tax dependents in his 1971 income tax return. *Since her eldest son is 19 years of age,* the tax dependency provision disqualified her household from further food stamp relief. Appellee Murry's household was denied such important food aid despite the fact that: she had been divorced from her husband for more than 10 years; he had remarried and is supporting his second wife and her two children on a laborer's income; and his contribution to appellee's household amounts to $57.50 per month and constitutes appellee's sole source of income.[5]

Appellee Nancy Marie Lee is the 39 year old mother of five children residing in Decatur, Alabama. Her entire monthly income totaled $23, derived entirely from public assistance; at the time this suit was filed, she expected that her household's income would be increased modestly. (The current monthly income eligibility criterion in the Food Stamp Program for a six-person household is $507 [37 Fed. Reg. 7724].) Her month's bills, however, totaled $249, $148 of which is attributable to food costs. Because of her desperate financial situation, Mrs. Lee applied for food stamp assistance for her six-member household. With her anticipated public assistance increase included, appellee Lee's household was eligible for $148 a month in food stamps at a cost of $14. Her household was denied food stamp relief, however, solely because her husband had claimed their two oldest sons, ages 20 and 18, as "tax dependents" in his 1971 tax returns.

Mrs. Lee's husband is not a member of her household. He deserted his family and has *not* proyided his family

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[5] All of the relevant facts concerning appellee Murry's household can be found in the Appendix, at 29-31.

with support since his desertion. Appellee Lee is not even aware of her husband's whereabouts or whether he is employed. But, because her husband claimed their two oldest sons as "tax dependents", appellee Lee is forced to choose between asking her sons to leave their home or denying herself and her children sufficient nourishment. Appellee has rejected the first alternative partially because her oldest son suffers from mental retardation (and already has spent substantial time in a state mental institution) and because her second oldest son requires constant attention due to past delinquency problems. The Lee family, therefore, must face grievous conditions of hunger and undernutrition.[6]

Appellee Victoria Alderete, the 43 year old mother of five children, resides with her offspring in San Antonio, Texas. She has been divorced from her husband since January, 1968. Her monthly income is only $205, $105 of which is derived from child support payments and $100 is obtained through public assistance. (The current monthly income eligibility criterion in the Food Stamp Program for a six-person household is $507 [37 Fed. Reg. 7724].) Because of her household's indigency status, she has had great difficulty in paying for the children's necessities. However, in the past, food stamps barely enabled the appellee to provide subsistence living conditions for herself and her youngsters; she was able to purchase $144 worth of food stamps monthly at a cost of $46, thereby receiving $98 in food aid—a sum equivalent to nearly 50 percent of her entire monthly income.

In May, 1972, Mrs. Alderete was informed that her household could no longer receive food stamp relief since her ex-husband had claimed her children as "dependents"

[6] All of the relevant facts concerning appellee Lee's household can be found in the Appendix, at 32-33.

in his previous year's income tax papers. Since appellee Alderete's oldest son was 18 years old, appellee's household was disqualified from food relief because of the Food Stamp Act's tax dependency provision. As a result, all household members were denied the food aid they need in order to properly sustain themselves.[7]

Appellee Pearl R. Beavert is the mother of two teenage children who reside with her in Seattle, Washington. Appellee Beavert is divorced. The total monthly income of the Beavert household is $224, which is derived entirely from the Aid to Dependent Children Program. (The current monthly income eligibility criterion in the Food Stamp Program for a three-person household is $307 [37 Fed. Reg. 7724].) The total recurring monthly expenses for the household are $296, including: $102 in house payments; $69 in utilities; and $125 for food and household necessities. In addition to these expenses, appellee Beavert must spend money for transportation, school expenses for her children, clothing and toiletries.

Previously, appellee Beavert's household received food stamp relief which it needed, and currently needs, for substantial nourishment. The household received $88 in monthly food stamps at a cost of $58, thereby obtaining a $30 benefit. On May 26, 1972, appellee Beavert was informed that her household's food stamp benefits would be terminated because her 18 year old daughter Crystal was claimed as a "tax dependent" by Crystal's father in his 1971 Federal income tax returns. Although the family currently receives no support from Crystal's father, the Beavert household has been denied food stamp relief solely because of the previous year's income tax claim.

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[7] All of the relevant facts concerning appellee Alderete's household can be found in the Appendix, at 34-47.

Since appellee Beavert feels morally bound to support and care for her daughter, and since Crystal is going to high school, Mrs. Beavert has not forced Crystal to leave her family and home. As a result, the entire household is denied the food stamp aid that they vitally need for obtaining nutritional adequacy.[8]

Appellees Joe Ben Valdez and Isabel Valdez are both 18 years of age. They and their one month old child reside in Pueblo, Colorado. The household's total monthly income is $224, $194 of which comes from monthly public assistance grants and $30 is obtained from the Work Incentive Training Program. (The current monthly income eligibility criterion in the Food Stamp Program for a three-person household is $307 [37 Fed. Reg. 7724].) The recurring monthly expenses for appellees' household are $237, including: $80 for rent; $4 for electricity; $82 for food; $10 for clothing; $8 for insurance; $45 for transportation (gas and automobile repairs); $6 for educational expenses; and $2 for recreation. These expenses are likely to increase as the child gets older.

In order to provide proper nourishment for his family, appellee Joe Ben Valdez applied for food stamp relief. Appellee's application, however, was rejected because his father—Ben G. Valdez—had claimed him as a "dependent" in the 1971 income tax returns. Appellees Joe Ben Valdez and Isabel Valdez did not receive any support from Ben G. Valdez in 1972, and they will not receive any support in the future. This is because Ben G. Valdez is very much in debt and his indigency status leaves him with insufficient funds to support the appellees.

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[8] All of the relevant facts concerning appellee Beavert's household can be found in the Appendix, at 48-49.

Ben G. Valdez is 54 years old and resides in Pueblo, Colorado with his wife, their two daughters, and their son. Father Valdez earns $450 per month as an employee for the Colorado Fuel and Iron Corporation. (Despite his household's substantial debts and indigency status, Ben G. Valdez's $450 in monthly income is above the $440 income eligibility limit for a five-person household [37 Fed. Reg. 7724]; therefore, since his household cannot get food stamps, his previous year's tax dependency declaration of appellee Joe Ben Valdez eliminated appellee's household from food stamp relief.) Out of this income, Ben G. Valdez pays $497 in expenses, including: $180 for food; $39.50 for utilities; $20 for clothing; $23.88 for (life, automobile and fire) insurance; $22 for transportation; $20 for educational expenses; $3 for recreation; and $189 in monthly payments for debts incurred (which are cumulatively in the amount of $5,250). Because of Ben G. Valdez's prohibitively high household expenses, he is unable to provide appellees' household with any support; since Ben G. Valdez is barely able to support his wife and three children, and since he has irregular additional expenses due to his ulcers and diabetes condition, appellees Joe Ben Valdez and Isabel Valdez receive no money from him.

After appellee Joe Ben Valdez was denied food stamps due to the tax dependency provision, appellee Valdez filed for a fair hearing contesting the denial of such relief. Although it was found that he was otherwise eligible for the Program, the decision of the hearing officer stated:

> Unfortunately, [Joe Ben Valdez] falls squarely within [the] definition of tax dependent. He is 18 years of age; he was claimed by his father as a tax dependent in 1971; and the father's household is not certified for food stamp assistance. Notwithstanding the fact that he is on public welfare

assistance, he must be found ineligible because he was a tax dependent and this is true even though such finding will defeat the expressed policy of Congress when it passed the Food Stamp Act. [Appendix, at 74]

As a result of this denial of food stamp relief, appellees' infant child became vulnerable to ill health due to the appellees' inability to provide adequate food sustenance.[9]

Appellee Robert A Broderson, 18 years of age, resides in Waterloo, Iowa with his 16 year old wife, Beverly. Appellee Broderson and his wife, at the filing of this law suit, expected a child around July 10, 1972. The household's entire monthly income is $110, all of which is derived from appellee Broderson's job at a service station. (The currently monthly income eligibility criterion in the Food Stamp Program for a three-person household is $307 [37 Fed. Reg. 7724].) Although the Brodersons are poor, they were denied food stamp relief because the appellee was claimed as a "dependent" by his father in the 1971 income tax returns. Appellee Broderson's parents, however, provide him with no support and Colorado law does not permit the appellee to sue his father for support since parents only are obligated to support their children if they are under 16 years of age. [See Appendix A to this Brief; Colorado Rev. Stat. Ann. §43-1-1.] Appellee's household, including the infant child, therefore, is vulnerable to the harmful effects of hunger and undernutrition.[10]

Appellee Kristi Schultz is 19 years of age. She resides with a girlfriend and the latter's two children in Peahi,

[9] All of the relevant facts concerning appellees Joe Ben Valdez and Isabel Valdez can be found in the Appendix, at 50-55, 72-75.

[10] All of the relevant facts concerning appellee Broderson's household can be found in the Appendix, at 56-57.

Maui, Hawaii. Appellee Schultz has no income at all and is totally dependent on her roommate for food and shelter. In August, 1971, appellee Schultz started to receive food stamps. At that time, she received $27.50 in monthly food benefits–she paid 50 cents and received $28 in food stamps. Soon thereafter, however, her food stamp benefits were terminated because appellee's parents declared her as a "dependent" for 1971 income tax purposes, despite the parents' refusal to provide appellee with any support after June, 1971.

Appellee Schultz got married in early 1972. She and her husband, who was unemployed, were unable to get food stamps because of appellee Schultz's dependency status in the previous year. Due to appellee's severe economic circumstances, and due to her inability to obtain food stamp aid, appellee Schultz was forced to live on whatever food she could find growing near her residence. Her diet consisted exclusively of sweet potatoes and water. As a result of this insufficient diet, appellee became seriously malnourished and subsequently was ill for an approximate period of four months. Additionally, the emotional and physical strain resulting from this deprivation was a major cause of her divorce from her husband in May, 1972.

Appellee Schultz is presently without funds. She has received no support from her parents since June, 1971, and she will not be claimed a "dependent" for 1972 income tax purposes. Her sustenance is solely dependent on the charitable nature of her girlfriend, whose family is also poor. (The current monthly income eligibility criterion in Hawaii for the Food Stamp Program is $202 for a one-person household and $480 for a four-person household [37 Fed. Reg. 10012 (May 18, 1972)].) The tax dependency provision, therefore, has provided appel-

lee Schultz with very unfortunate economic and health problems.[11]

Appellee Leonila Nevarez resides with her five children in San Antonio, Texas. Her household has a monthly income of $215 which is obtained through the combined job earnings of appellee's two oldest children. (The current monthly income eligibility criterion in the Food Stamp Program for a six-person household is $507 [37 Fed. Reg. 7724].) By spending only $41 for the household's entire monthly food supply, appellee Nevarez can barely keep her expenses below her household's income. Appellee Nevarez's household, therefore, is in great need of food stamp assistance; previously, the household received $144 a month in food stamps at a cost of $21—a benefit of $123, more than 50 percent of appellee household's total income.

Although appellee Nevarez's estranged husband has provided the household with no support whatever, Mr. Nevarez apparently claimed his children as "dependents" in the previous tax year. Since the Nevarez's oldest son Larry is 18 years of age, appellee's household was denied food stamps because of the tax dependency provision. Mr. Nevarez's whereabouts are unknown, and appellee, therefore, is totally unable to obtain any support from him. Appellee Nevarez, therefore, has been left with the following dilemma: either force Larry out of the household in order to get food stamps (thereby eliminating Larry's earnings from the household's meager income, and causing a rupture of the family's close relationship), or keep Larry in the household (and lose the statutory right to obtain food stamps).[12]

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[11] All of the relevant facts concerning appellee Schultz's household can be found in the Appendix, at 58-59.

[12] All of the relevant facts concerning appellee Nevarez's household can be found in the Appendix, at 60-71.

Appellees instituted a class action in the United States District Court for the District of Columbia to enjoin the enforcement of the tax dependency provisions in the Food Stamp Act [7 U.S.C. §2014(b)] and regulations [7 C.F.R. §§270.2(q) and 271.3(d)]. They argued that these provisions violated the Fifth Amendment to the Constitution of the United States in that they denied appellees due process of law by establishing a conclusive, irrebuttable and erroneous presumption that households, containing a "tax dependent" of the previous year, are not poor and in need of food stamps. Appellees also argued that the provisions denied appellees equal protection of the law. Appellees' motion for a temporary restraining order was argued before District Court Judge Gerhard A. Gesell. The motion was denied.[13] A three-judge District Court was then convened to hear this case, pursuant to 28 U.S.C. §§2282 and 2284. After hearing oral arguments on July 31, 1972, upon cross motions for summary judgment (and an alternative motion to dismiss filed by the appellants), the District Court, in a *per curiam* opinion, ruled that the tax dependency provisions were in violation of the Fifth Amendment, and permanently enjoined further enforcement and implementation of these provisions by the appellants.

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[13] Judge Gesell did not decide this motion until the day following the oral argument. His comments during argument on the motion, however, implied that his decision would be influenced by the amount of time it would take to convene a three-judge court to hear appellees' motion for a preliminary injunction. It appears that his conclusion that such a court could be convened within a reasonable period of time, and that, consequently, denial of the motion for a temporary restraining order would result in a relatively short delay in providing possible relief to the appellees, weighed heavily in his decision to deny the temporary restraining order. [See Appendix B to this Brief, at 10b-12b.]

SUMMARY OF ARGUMENT

The tax dependency provision in the Food Stamp Act and regulations deny food stamp eligibility to households containing persons 18 years of age or older who have been claimed as "dependents" for Federal income tax purposes by taxpayers who are, themselves, ineligible for food stamp relief. Appellees are members of households that have been denied food stamp eligibility solely because their households contain "tax dependents", and therefore, they have standing to challenge the Constitutionality of the tax dependency provisions.

The tax dependency provisions deny essential food relief to "tax dependent" households that are currently needy solely on the basis of the conclusive and erroneous presumption that households, containing a member who has been claimed as a "tax dependent" for the previous tax year, have access to nutritional adequacy. These provisions are arbitrary and capricious and have no reasonable relationship to the purposes of the Food Stamp Act or the achievement of any other permissible governmental purpose. They, therefore, deny appellees their rights to equal protection of the law in violation of the Fifth Amendment to the United States Constitution.

In addition, the tax dependency provisions deny appellees their right to procedural due process. The provisions conclusively, irrebuttably and erroneously presume that appellees' households are not in need of food stamp relief simply because they contain members who were claimed as "tax dependents" for the previous tax year. Appellees are prohibited from proving, through their applications for food stamp eligibility, or through a fair hearing process, that their households are, in fact, needy. The tax dependency provisions, therefore, deny appellees their food stamp entitlements without proce-

dural due process of law, thereby violating the Fifth Amendment to the United States Constitution.

ARGUMENT

I.

ALL OF THE APPELLEES HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE FOOD STAMP ACT'S TAX DEPENDENCY PROVISION.

Appellants, in footnote 3 of their brief [see Brief of Appellants, at 5-6], questioned, for the first time in this suit, the standing of appellees to challenge the Constitutionality of the tax dependency provision in the Food Stamp Act. It is clear, however, that all of the appellees, by virtue of their status as members of needy households which were denied food stamp eligibility because of the operation of the tax dependency provision, have standing to bring this suit.

In *Flast v. Cohen*, 392 U.S. 83 (1968), this Court reiterated the traditional test for determining whether parties have standing to sue. The Court, in discussing whether taxpayers had standing to sue to prevent certain expenditures of Federal funds, stated:

> The "gist of the question of standing" is whether the party seeking relief has "alleged such a *personal stake* in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962). In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue . . . [392 U.S., at 99-100] (emphasis added)

Similarly, in *Sierra Club v. Morton*, 405 U.S. 727 (1972), this Court stated:

> Whether a party has a *sufficient stake* in an otherwise justifiable controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends upon whether the party has alleged such a "personal stake in the outcome of the controversy," *Baker v. Carr*, 369 U.S. 186, 204, as to ensure that "the dispute sought to be adjudicated will be presented in a form historically viewed as capable of judicial resolution." [405 U.S., at 731-732] (emphasis added)

See also *Roe v. Wade*, ___ U.S. ___, 41 U.S.L.W. 4213, 4216 (U.S., Jan. 22, 1973), *Eisenstadt v. Baird*, 405 U.S. 438, 443-446 (1972); *Golden v. Zwickler*, 394 U.S. 104 (1969); *Peoples v. United States Department of Agriculture*, 427 F. 2d 561, 563-564 (D.C. Cir. 1970).

Clearly, appellees in this case have a sufficient personal stake in the issues being litigated in this suit. They are all members of needy households who have been denied eligibility for vital food stamp relief because of the tax dependency provision in the Food Stamp Act. Should this Court find the tax dependency provision unconstitutional, then appellees will be provided the means with which to avoid hunger and malnutrition. Should this Court find no Constitutional violations inherent in the provision, then appellees will be denied an opportunity to purchase a nutritionally adequate diet. [See 7 U.S.C. §§2011, 2013(a), 2014(a) and 2016(a)] It is difficult to conceive of a factual situation in which parties to litigation could have any greater stake in the controversy than that which appellees have in this case. Certainly, if a

physician has standing to raise the Constitutional rights of his patients [*Griswold v. Connecticut*, 381 U.S. 479, 481 (1965)], if a distributor of contraceptives has standing to advocate the Constitutional rights of persons obtaining contraceptives [*Eisenstadt v. Baird*, 405 U.S. 438 (1972)], if a Federal taxpayer has standing to challenge the Constitutionality of certain Federal expenditures [*Flast v. Cohen*, 392 U.S. 83 (1968)], then persons denied the means by which to avoid hunger and malnutrition have standing to challenge the Constitutionality of the statutory provision that resulted in such denials.

Appellants' claim that appellees have no standing to challenge the Constitutionality of the tax dependency provision appears to be grounded on the erroneous belief that none of the appellees should have been denied food stamp eligibility because of that provision. Instead, appellants claim that all of the appellees are victims of improper administrative applications of the tax dependency rule. In this regard, appellants divided the appellees into two groups: (1) those whose households contain members who fraudulently were claimed as "tax dependents", and (2) those whose households contain a "tax dependent" where said "dependent" resided with the taxpayer during the year the dependency was claimed, but not during the year thereafter when the "dependent's" household was denied food stamps. Appellants' claim that the tax dependency provision does not disqualify either of these groups from food stamp eligibility. Appellants' position, however, is unsupported in law or fact.

There is nothing in the tax dependency provision in the Food Stamp Act [7 U.S.C. § 2014(b)] that states or infers that victims of fraudulent dependency claims are

not to be denied eligibility. There is nothing in appellants' tax dependency regulation [7 C.F.R. §271.3(d)], promulgated pursuant to the statute, that allows or infers any such exception. Nor do appellants' own Instructions, which explain and clarify their regulations to the State agencies, provide for any exception in the application of the tax dependency rule when persons are victims of fraudulent tax dependency claims [FNS Instruction 732-1, §III-F].

In addition, appellants—in the District Court—verified that there is no exception to the tax dependency rule in cases of invalid dependency claims. In his affidavit, to the District Court, Edward J. Hekman, Administrator of the Food and Nutrition Service of the United States Department of Agriculture, simply stated that the tax dependency regulation [7 C.F.R. §271.3(d)] had to be promulgated in the form in which it was issued on July 29, 1971, "in order to carry out the intent of the legislation" [Appendix, at 76-77]. Howard P. Davis, Acting Administrator of the Food and Nutrition Service, in his affidavit to the District Court, also failed to refer to any exception to the tax dependency rule. In fact, Acting Administrator Davis was careful to point out that in a fair hearing, in which an applicant challenges a denial of eligibility based on the tax dependency rule, "*there are no factual issues to be presented or challenged . . . other than the issue of whether or not a member of the household has been claimed as a dependent child,* by a taxpayer who is not a member of a household eligible for food assistance (a fact the household, in most cases, already will have disclosed in its application)." [Appendix, at 83] (emphasis added)

Finally, during oral argument in the District Court, appellants acknowledged that the invalidity of a tax dependency claim does not, under the statute, bar the

application of the tax dependency rule [Appendix B to the Brief, at 22b-24b]. Indeed, appellants conceded that they do not even look into a taxpayer's tax returns to determine whether the tax dependency claim was validly made [Appendix B to this Brief, at 22b].

It is clear, therefore, that appellants' contention—that victims of invalid tax dependency claims have no standing in this case because the provision does not deny them eligibility—is groundless. The Food Stamp Act, the regulations, the instructions, affidavits of Agriculture Department administrators, and statements of appellants' counsel all demonstrate that appellants' position has no validity in law or in reality. Similarly important, appellants are incorrect in their very assumption that all of the appellees, except appellees Valdez, Broderson and Schultz, are victims of invalid tax dependency claims. No such contention can be supported in the cases of appellees Murry and Alderete.

Appellee Murry had been receiving $15 every two weeks plus payment of rent ($25 per month) from her ex-husband as court-ordered child support for her two sons. Since the Murry household has no other income, these child support payments were the sole support of Mrs. Murry's two sons. Consequently, appellee's ex-husband *legitimately* claimed his 19-year old son as a "tax-dependent" even though the child was actually receiving only the equivalent of $11.50 monthly.

Appellee Alderete's 18-year old son also is receiving over half of his support from his father. Since $105 of the family's $205 monthly income came from child support payments, it is obvious that the child's father properly took his son as a "tax dependent". Even though the family's income and the child support payments are dreadfully low, the tax dependency claim was properly

made since the "dependent" received over half of his income from his father.

In short, appellees Murry and Alderete are not victims of fraudulent tax dependency claims and they have standing to challenge the provision in question: they were denied vital food stamp relief solely because of the statutory tax dependency provision. By assuming that these two appellees were victims of illegal dependency claims, however, appellants merely substantiate the invidious harshness and irrationality of the provision itself. The provision is not reasonably related to the purposes of the Food Stamp Program particularly insofar as it has absolutely no bearing on a household's need for food stamp relief.

Appellants' contention that appellees Valdez, Broderson and Schultz have no standing to litigate this case—since they were living with the taxpayer (who made the dependency claim) during the year for which they were claimed as "dependents", and, therefore, should not have been subject to the tax dependency rule—is incorrect for two reasons. First, appellees Joe Ben Valdez and Kristi Schultz lived in the taxpayers' households for only *part of the taxable year* for which they were claimed; *during most of that tax year*, they resided in their current households. Therefore, even under the appellants' interpretation of the tax dependency provision, appellees Valdez and Schultz have been denied food stamps in accordance with the unconstitutional dictates of the tax dependency provision.

Second, there are absolutely no legal or factual grounds upon which appellants can substantiate their contention that "tax dependents", living in the taxpayer's households *during the entire year* for which they were claimed—but not during the year thereafter—are not

subject to the tax dependency rule. Nothing in the tax dependency provision of the Food Stamp Act [7 U.S.C. §2014(b)] provides or infers such an interpretation. Appellants' own regulation [7 C.F.R. §271.3(d)] fails to provide or infer this kind of exception. Appellants' Instruction [FNS Instr. 732-1, §III-F] does not explain or clarify the tax dependency rule to allow for appellants' newly-created interpretation. Appellants' affidavits in the District Court [Appendix, at 76,80] also fail to allow for such an interpretation of the tax dependency rule and, therefore, the state agencies (administering the Program) are not aware of appellants' new interpretation of the rule. If they were, appellee Broderson would not have been denied food stamp eligibility. Clearly, appellants' position—that the tax dependency provision is not applicable to a person who lives in the taxpayer's home during the entire year the dependency claim was made, but not during the year thereafter—is erroneous and is belied by their own statutory interpretation prior to this appeal.

In sum, all of the appellees have been denied food stamp eligibility because of the tax dependency provision in the Food Stamp Act. They have a vital stake in this Court's determination of the tax dependency provision's Constitutionality because an affirmation of the District Court's decision is the only way appellees can obtain food stamp relief. Appellants would deny appellees the opportunity to challenge and settle this issue by interpreting the tax dependency provision in ways that they claim would not have disqualified appellees. Appellants, however, ignore the fact that their new interpretation of the statute is contrary to the provision's plain language as well as their own regulations, instructions, affidavits, oral argument in District Court, and the actual application of the rule by state agencies

pursuant to appellants' dictates. Moreover, even under appellants' erroneous new interpretations of the statute, appellees Murry, Alderete, Valdez and Schultz have standing to challenge the Constitutionality of the provision. Consequently, the appellees herein have a sufficient personal stake in this adjudication to assure that they have the Constitutional requisites for standing.

II.

THE DISCRIMINATORY TAX DEPENDENCY PROVISION, WHICH DENIES AID TO AN ENTIRE HOUSEHOLD IF ONE MEMBER THEREOF WAS CLAIMED AS A "TAX DEPENDENT" FOR THE PREVIOUS YEAR, VIOLATES EQUAL PROTECTION INSOFAR AS IT IS ARBITRARY AND IRRATIONAL AND HAS NO REASONABLE RELATIONSHIP TO ANY LEGITIMATE GOVERNMENTAL INTEREST.

The tax dependency provisions in the Food Stamp Act [7 U.S.C. §2014(b)] and regulations [7 C.F.R. §§270.2(q) and 271.3(d)] create two classes of persons for purposes of Food Stamp Program eligibility: *one class* composed of persons financially in need of food stamp relief who reside in households which do not contain persons written off as "tax dependents" *for the previous year*; and *another class* composed of persons similarly in need of food stamp aid but who reside in households which include a person who was declared a "tax dependent" *for the past year* by a parent who lives in another household which is ineligible for food stamps. As a result of this singular exception, poor people in the latter class are entirely excluded from food stamp relief while members of the former class are entitled to such assistance. This discriminatory denial of crucial food

aid—which is based on the conclusive, irrebuttable and erroneous presumption that households containing a previous year's "tax dependent" are unneedy and have access to nutritional adequacy—is arbitrary and not reasonably related to the Food Stamp Act, and is therefore violative of equal protection.

It is well settled that the Constitutional dictates of equal protection are applicable to the Federal defendant-appellants herein through the Due Process Clause of the Fifth Amendment. [*Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Schneider v. Rusk*, 377 U.S. 163, 168 (1964); *Davis v. Richardson*, 342 F. Supp. 588 (D. Conn. 1972), *aff'd*,_____ U.S.___, 41 U.S.L.W. 3345 (U.S., Dec. 18, 1972); *Griffin v. Richardson*, 346 F. Supp. 1226, 1232 (D. Md. 1972), *aff'd*,_____U.S._____, 41 U.S.L.W. 3345 (U.S., Dec. 18, 1972); *United States v. Jones*, 384 F.2d 781, 782 (7th Cir. 1967)] Federal officials are not permitted to arbitrarily discriminate against persons in the administration of government benefit programs. [*Shapiro v. Thompson*, 394 U.S. 618, 641-642 (1969); *Davis v. Richardson, supra; Griffin v. Richardson, supra*]

The Traditional principle underlying the application of the equal protection clause was articulated by this Court in *Gulf, Colorado and Santa Fe Ry. v. Ellis*, 165 U.S. 150 (1897). The Court said that a classification

> must always rest upon some difference *which bears a reasonable and just relation to the act in respect to which the classification is proposed* and can never be made arbitrarily and without any such basis. [165 U.S., at 155] (emphasis added)

In a somewhat more recent statement of that principle, the Court, in *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920), said that a "classification must be reasonable, not arbitrary, and *must rest upon some*

ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." (emphasis added) [See *Reed v. Reed,* 404 U.S. 71, 76 (1971)] And last term, the Court reiterated that "in all equal protection cases . . . the crucial question is *whether there is an appropriate governmental interest suitably furthered by the differential treatment.*[14] [*Police Department of Chicago v. Mosley,* 408 U.S. 92, 95 (1972)] (emphasis added)

Therefore, although the purpose behind the tax dependency provision–i.e., the prevention of the non-needy households from receiving Food Stamp Program relief–is most praiseworthy, the provision must "suitably further" that purpose and must have "a fair and substantial relation to the object of the legislation."[15]

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[14] Although the *Mosley* case, because of its First Amendment overtones, was eventually decided on the strict scrutiny test –wherein the defendant-appellants had to demonstrate that the discrimination promoted a compelling governmental interest [408 U.S., at 98-102]–the test enunciated in the text stated the traditional, less cumbersome equal protection formulation. [See, also, *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 172-173 (1972); *James v. Strange,* 407 U.S. 128, 140-141 (1972); *Eisenstadt v. Baird,* 405 U.S. 438, 446-447 (1972); *Rinaldi v. Yeager,* 384 U.S. 305, 308-309 (1966); *Morey v. Doud,* 354 U.S. 457, 465 (1957).]

[15] Appellees completely support legitimate efforts that seek to eliminate non-needy households from participating in the Food Stamp Program. Poor people, like the appellees and their class, are interested in preventing the affluent from participating in the Program because the size of indigents' benefits are likely to diminish if many rich people wrongfully participate. Moreover, abuses in the Program frequently lead to irrational provisions–like the one here at issue as well as the unrelated household provision [7 U.S.C. §2012(e)]–which invidiously harm the poor and hungry, the very persons whom the Food Stamp Program was designed to help. [7 U.S.C. §2011] With regard to the provision

This nexus between the permissible governmental objective and the discriminatory governmental treatment should not be lightly inferred. [See Gunther, "The Supreme Court 1971 Term Foreword: In Search of Evolving Doctrine on a Changing Court: A Model For a Newer Equal Protection," 86 Harv. L. Rev. 1, 20-24, 26-30 (1972)] As Justice Jackson stated, and as the Court approvingly cited in *Eisenstadt v. Baird, supra,* 405 U.S., at 454:

> Invocation of the equal protection clause . . . does not disable any governmental body from dealing with the subject at hand. It merely means that the prohibition or regulation must have a broader impact. I regard it as a salutary doctrine that *cities, states and the Federal Government must exercise their powers so as not to discriminate between their inhabitants except upon some reasonable differentiation fairly related to the object of regulation.* This equality is not merely abstract justice. The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to

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here at issue, therefore, "[w]e do not question the importance of [the] interest [sought to be promoted]; what we do question is how the challenged statute will promote it." [*Weber v. Aetna Casualty & Surety Co., supra,* 406 U.S., at 173]

require that laws be equal in operation. [*Railway Express Agency v. New York*, 336 U.S. 106, 112-113 (1949) (Jackson, J., concurring)] (emphasis added)

As appellees will demonstrate, the tax dependency provision does not have such a fair and reasonable relationship to the object of the legislation and, with reference to the purposes of the Food Stamp Act [7 U.S.C. §2011], the provision is wholly arbitrary and capricious.

A. The Tax Dependency Provision Is Arbitrary and Capricious In That It Conclusively, Irrebuttably and Erroneously Concludes That a Household Containing a "Tax Dependent" of the Previous Year Is Not Needy.

Congressional purposes pursuant to the tax dependency provision have been set forth concisely by the appellants: Congress sought to eliminate non-needy households from participating in the Food Stamp Program [see appellants' Brief, at 9-10 (text and n. 5)]; Congress viewed the provision "as a question of defining those people who are needy."[16] [Appendix B to the Brief, at 5b] Appellants sought to rationalize the discriminatory treatment pursuant to the tax dependency provision by indicating that—for Food Stamp Program purposes—it is permissible to classify people on the basis of "whether or not they are needy." [*Ibid.*, at 6b] Indeed, similar to the House Agriculture Committee which had formulated the provision [House Report No.

[16] Since the provision was designed to determine which households are neither poor nor in need of food assistance, the tax dependency provision was incorporated in the income and resource subsection of the eligibility section. [7 U.S.C. §2014(b)]

91-1402, 91st Cong., 2d Sess. (1970), at 8], appellants likened the provision to the income need eligibility standards. [Appendix B to Brief, at 6b-7b]

Under the provision, a household is rigidly deemed to be unneedy if a member therein, during the past year, was written off as a "tax dependent" by a parent in another household which is ineligible for food stamp aid. Even if the "tax dependent's" household is poor, hungry and malnourished, it conclusively is deemed to have sufficient resources for obtaining a nutritionally adequate diet. No matter what the circumstances, once it is established that a household contains a "tax dependent" of the previous year, that household may not receive any Federal food relief.

That this provision is arbitrary and capricious with regard to the Food Stamp Program's purposes is readily apparent from the Act's Declaration of Policy:

> It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized cooperatively by the States, the Federal Government, local governmental units, and other agencies to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households . . . To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade. [7 U.S.C. §2011; see, also, 7 U.S.C. §2014(a)]

Although Congress sought to provide adequate nutrition to all needy households, the tax dependency provision arbitrarily frustrates that goal. Even though the provision has absolutely no relationship to the determination of present need, and even though the provision is, at best, only tenuously related to the assessment of past need, it conclusively and irrebuttably presumes that households, containing a "tax dependent" of the previous year, presently are not poor. At no point in the administrative process—either during the initial application stage or at any subsequent hearing—may "tax dependent" households adduce any evidence about their true needy status. [See affidavit of appellant Food and Nutrition Service Acting Administrator Howard P. Davis, Appendix, at 83] As a result, the rigid and inflexible provision arbitrarily eliminates many thousands of needy households from food stamp relief, leaving them hungry and malnourished in complete frustration of the Program's important purposes. [7 U.S.C. §2011]

Certainly the denial of crucial food stamp aid—based solely on the irrebuttable presumption that households, containing a "tax dependent" of the previous year, are not needy—is arbitrary when such households have no right to demonstrate that the dependency claims were fraudulent. Such denials of aid are also arbitrary and capricious when needy households are precluded from demonstrating that the support they receive is wholly insufficient "to purchase a nutritionally adequate diet" [7 U.S.C. §2014(a); see, also, 7 U.S.C. §§2011, 2013(a) and 2016(a)]. Moreover, it is entirely arbitrary to conclusively presume that such households are not needy even when they can convincingly demonstrate that: the taxpayer presently is unable or unwilling to contribute to the "dependent" even though contributions were made in the previous year; or the taxpayer indicated to the Internal Revenue Service and the Food Stamp Office that

he will not file a dependency claim this year; or the members of the "dependent's" household receive absolutely or virtually no benefit from the contributions by the taxpayer (either because the contributions are made solely to and for the "dependent" or because the contributions to the "dependent" are so small that they cannot be apportioned to other household members). Yet, the tax dependency provision sweeps broadly and inflexibly, unwittingly denying assistance to the rich and poor alike.

1. *Households Containing a "Tax Dependent" of the Previous Year May Not Demonstrate That the Dependency Claim Was Taken Fraudulently.*

Since the provision at issue denies aid exclusively on the basis of a dependency claim, it would be only reasonable to permit a harmfully affected, impoverished household to demonstrate that the dependency claim was fraudulently taken. Contrary to the appellants' newly-created interpretation of the statute [see appellants' Brief, at 12 (both text and n. 6)], however, the provision is not so reasonable. In language, and in its implementation, the provision automatically disqualifies a household from Federal food aid if it contains a person written off as a "tax dependent" in the previous year. As Acting Food and Nutrition Service Administrator Howard P. Davis indicated:

> [I]n the case of households which have initially been determined to be ineligible for participation in the program on the basis of tax dependency, *there are no factual issues to be presented or challenged by the household at . . . a hearing, other than the issue of whether or not a member of the household*

has been claimed as a dependent child by a taxpayer who is not a member of a household eligible for food assistance (a fact the household, in most cases, already will have disclosed in its application). *If a household states that it has such a tax dependent member, the household is, in conformity with the Food Stamp Act, the program regulations, and the instruction of FNS governing the program administration by State agencies, determined to be ineligible.* [Appendix, at 83] (emphasis added)

Based both on language and previous interpretation, therefore, the statute [7 U.S.C. §2014(b)], pertinent regulations (7 C.F.R. §§270.2(q) and 271.3(d)], and appellants' Instructions [FNS Instr. 732-1, §III-F] clearly prevent households from challenging the legitimacy of the tax dependency claim. Indeed, the uniform state-by-state implementation of the provision verifies that households cannot challenge fraudulent dependency claims which serve to preclude them from obtaining much-needed food relief.

More specifically on point, however, is the colloquy in the District Court wherein the appellants admitted that the statutory provision cannot be implemented so as to scrutinize the legitimacy of the tax dependency claim:

JUDGE GESELL: In administering the statute, you don't even look at the tax returns, do you?

MR. BRICKFIELD: No, sir.

JUDGE GESELL: So all that talk about the tax returns is a little off the mark, isn't it? You don't examine them to determine whether or not the dependency claim is validly made, whether the dependency claim is actually made, or anything else. You ask some of these poor people who come in and say, I think so; so they get no food stamps. They say, I think he did last year, or, I don't know. There isn't any

administration through the Internal Revenue Bureau of this system that makes it fair throughout the country. If the women, when she goes in, says, No he didn't, then she gets the food stamps.

MR. BRICKFIELD: Yes, sir.

JUDGE GESELL: So there isn't any use of the tax information to implement the program, in fact, is there?

MR. BRICKFIELD: No, sir. The use of the tax information it is believed by the Internal Revenue Service, for this purpose, would be illegal and contrary to their statutes, which provide a non-disclosure of tax returns.

JUDGE GESELL: Doesn't that suggest the further arbitrariness, then, in the standard that the Congress used?

MR. BRICKFIELD: I think not, sir. The question is, claimed, as opposed to any other situation, when a person is claimed; and you are entitled to a hearing on the fact of whether they are or are not claimed. That hearing you get. You are entitled to a hearing on whether the parent taxpayer is or is not of an income that would make him eligible for food stamps. These hearings you get. But once that parent claims the child for income tax purposes, he receives that benefit and, therefore, the duality of benefit.

JUDGE GESELL: He is no where around.

MR. BRICKFIELD: He is given some money.

JUDGE GESELL: He is gone; he is long gone; he is not before the hearing. Nobody knows where he is or who he is or who is shacked up with or what he is doing. Isn't that right? The person that is in the hearing is the lady that is home with a bunch of young kids, as I understand this case.

MR. BRICKFIELD: Yes, sir.

JUDGE GESELL: Not the man who claimed the dependency. He is gone. Is that right?

MR. BRICKFIELD: That is under the situation—

JUDGE GESELL: What do you mean about this hearing? He is not there.

MR. BRICKFIELD: Under the situation, as we have it by these few Plaintiffs, the man is not there. This woman comes in. If she says she was not claimed, her word is taken. If she says she was claimed and she says she knows, then that word is taken.

JUDGE GESELL: Then the statute operates.

MR. BRICKFIELD: Then the statute operates . . . . [See Appendix B to this Brief, at 22b-23b]

For appellees Lee, Nevarez and Beavert, Judge Gesell's hypothetical is a stark reality. Mrs. Lee has had to take care of herself and her five youngsters on a monthly income of only $23. Even though the current monthly income eligibility criterion for a six-person household is $507 [37 Fed. Reg. 7724], she is conclusively deemed unneedy and ineligible for food stamp relief since her husband—whose whereabouts are unknown and who provides no support to his wife and children—claimed the two oldest children as "tax dependents." [Appendix, at 32-33] Mrs. Nevarez's six-person household must subsist on only $215, but is irrebuttably deemed not poor (and, therefore, denied food stamp aid) because her husband—whose whereabouts are also unknown and who makes no contribution to Mrs. Nevarez's household—apparently fraudulently claimed his oldest son as a "tax dependent". [Appendix at 60-62] And appellee Beavert, who is poor and whose husband wrongfully claimed their oldest daughter Crystal as a "dependent", is denied food stamp aid for herself and her children on the erroneous but

conclusive presumption that her household is unneedy. [Appendix, at 48-49]

Due exclusively to the sins of another, therefore, appellees and their households are completely precluded from the food sustenance they could have obtained through the Food Stamp Program. For the one year following the improper tax dependency claim, the appellees–regardless how poor, hungry or malnourished they may be–are denied vital food stamp aid even though they can convincingly demonstrate that the dependency claim was fraudulent. Since, under the statute, they cannot challenge the propriety of the tax dependency claim, and since the claim was uncontrollably and wrongfully made by another, it is obvious that the provision here at issue is both arbitrary and irrational. [See *Levy v. Louisiana*, 391 U.S. 68, 72 (1968); *Weber v. Aetna Casualty & Surety Co., supra*, 406 U.S., at 175-176.]

2. *Households containing a "tax dependent" of the previous year may not demonstrate that they have been receiving insufficient support from the taxpayer.*

In order to claim someone as a "dependent" for Federal income tax purposes, it is not necessary to provide that person with any minimum contribution. Under the Internal Revenue Code, an individual may be claimed as a "dependent" even if the claimant provided the "dependent" with only one dollar ($1) in annual support. [26 U.S.C. §§152(a)] This is because the Code merely defines a "dependent" as an individual "over half of whose support, for the calendar year in which the taxable year of the taxapyer begins, was received from

the taxpayer . . . " [*Id.*] Consequently, even when a legal and non-fraudulent dependency claim is made, the support provided to the "dependent" may be wholly insufficient "to purchase a nutritionally adequate diet." [7 U.S.C. §2014(a); see, also, 7 U.S.C. §§2011, 2013(a) and 2016(a)]

Even though a "dependent" may be poor, hungry and malnourished, the tax dependency provision does not permit said "dependent" to demonstrate his indigency status. At no time in the administrative process may the poverty-stricken "dependent" adduce any evidence of his inability to obtain adequate nutrition. In complete frustration of the Food Stamp Program's purpose [7 U.S.C. §2011], therefore, the tax dependency provision rigidly and inflexibly denies food relief solely because the indigent was claimed as a "dependent" for the previous year. As the District Court and appellants indicated:

> THE COURT: If there are ten people in the household and the father that is long gone gives the oldest son $10, and there is no other income in the family, all the other nine people get excluded from stamps?
>
> MR. BRICKFIELD: That is so. This was considered—[Appendix B to this Brief, at 5b]

Consequently, even if a child received a small cash gift on Christmas from his father, and that was the only money received by the child's household that year, then the child properly could be written off as a "tax dependent" and his household would be ineligible for food relief during the following year. [*Id.* at 20b]

The irrationality of this situation is best exemplified by appellees Murry and Alderete. Appellee Lula Mae Murry's five-person household subsists exclusively on $57.50 monthly support payments provided from her ex-husband, Lazrous Murry (who, because he supports his

second wife and their two children on a laborer's salary, cannot provide any additional support to appellee Murry's household). Appellee's entire household was denied food stamp aid because Mrs. Murry's oldest son, Jordan, is over 18 years of age and was claimed as a "dependent" in Lazrous Murry's tax return. [Appendix, at 29-31] Therefore, as a result of the $57.50 monthly support payment received by appellee's household—or, more precisely, as a result of the proportionate monthly share received by Jordan ($11.50)—the entire household was denied $132 in crucial monthly Federal food aid. [37 Fed. Reg. 7724]

Similarly, appellee Victoria Alderete's six-person household—which has a monthly income of $205, $105 of which is provided from Mrs. Alderete's ex-husband (Juan)—was denied food stamp relief because appellee's 18 year old son (George) was declared as a "tax dependent" by her ex-husband. [Appendix, at 34-36] Consequently, as a result of the $105 monthly payments to appellee's household—or, more on point, due to the $17.50 in proportionate monthly support received by George—the Alderete household lost $152 in monthly food stamp allotments. [37 Fed. Reg. 7724]

The irrationality of the provision, therefore, is obvious. Poverty-stricken households are denied health-essential food benefits solely because of a tax dependency claim filed by a parent who can provide only a small fraction of the "dependent's" economic and nutritional needs. Indeed, after the support received by appellees' households are added to all their other income, they fall far short of the income poverty standard established by the appellants for Food Stamp Program eligibility:

Appellee	Appellee's Household Size	Appellee's Monthly Income	Monthly Food Stamp Eligibility Standard
Murry	5	$ 57.50	$440
Lee	6	23	507
Alderete	6	205	507
Beavert	3	224	307
Valdez	3	224	307
Broderson	3	110	307
Schultz	1	0	202[17]
Nevarez	6	215	507

[37 Fed. Reg. 7724]

Despite the fact that the appellees, and thousands of persons similarly situated, are deemed nutritionally-indigent, the tax dependency provision rigidly and entirely precludes them from obtaining necessary food relief. Certainly with regard to the purposes of the Food Stamp Program [7 U.S.C. §2011], the provision is wholly arbitrary, irrational and capricious.

3. *Households containing a "tax dependent" of the previous year may not demonstrate that they receive no current support from the taxpayer.*

In actual operation, the tax dependency provision only excludes indigents from Program participation *during the year after the tax period for which the dependency claim was made.*[18] [See *supra*, at 6] Consequently, it would

[17] The one-person eligibility standard for appellee Schultz is based on the income eligibility criteria for the State of Hawaii. [37 Fed. Reg. 10012]

[18] Appellants have dramatized the absurdity of the provision's operation, in this respect, in their own Instructions. [FNS Instr. 732-1, §III-R] The Instructions state:

be only reasonable to permit affected households to demonstrate the current status of their relationship with the taxpayer. Since poor people's lives undergo frequent changes, it would be wholly arbitrary to *conclusively* presume that a poor person's economic and dependency circumstances remained the same from one year to the next. Yet, in language and in operation, this is precisely what the tax dependency provision does.

Even when a household, containing a previous year's "tax dependent", can convincingly demonstrate that it currently receives no support from the taxpayer, such proof is wholly irrelevant to the operation of the tax dependency provision. Even when the household can prove that it no longer knows the whereabouts of the taxpayer, the household is denied food stamp relief. And even when such a household can produce the taxpayer's sworn affidavit attesting that he will not make a dependency claim for the current year, the household is denied access to Federal nutrition assistance. In short, the tax dependency provision inflexibility denies necessary

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A person will be considered a tax dependent for the period claimed and for a period of one year after expiration of such tax period. For example, if a person is claimed as a dependent in March of 1972 for the 1971 tax year, *he will be ineligible until January 1973* . . . [Appendix, at 81] (emphasis added)

In actual operation, the tax dependency claim for the 1971 tax year does not affect the "dependent" household's eligibility during that year; this is because the dependency claim is made in March, 1972, and the tax year already is completed when the claim is made. The "dependent" household's ineligibility actually occurs solely from March 1972 to December 31, 1972 (during the year subsequent to the tax period)—a period which is wholly irrelevant to the tax claim, during which economic and dependency circumstances are likely to have changed.

food aid until 12 months after the expiration of the tax period—regardless of changes in the dependency relationship which spawned the denial of food stamp relief.

For appellees Valdez, Broderson and Schultz, this arbitrary aspect of the tax dependency provision has had a most harmful effect. Appellee Joe Ben Valdez, as an example, was legitimately claimed as a "tax dependent" for 1971 by his father, Ben G. Valdez. For tax year 1972, however, Ben G. Valdez was totally unable to provide his son with any support. Although his income was above the Federal guidelines for food stamp relief—insofar as his income was $450, merely $10 more than the income eligibility criterion for a five-member household [37 Fed. Reg. 7724]—Ben G. Valdez's debts (totaling $5250) and expenditures substantially exceeded his household's income; moreover, his diabetic and ulcer condition burdened his ability to keep his household solvent. Throughout 1972, therefore, appellee Valdez and his father could conclusively prove that no support would be provided in, and no dependency claim would be taken for, tax year 1972. Nevertheless, when appellee Valdez challenged his household's ineligibility for food stamp assistance in 1972, the hearing officer was forced to conclude:

> Unfortunately, the appellant falls squarely within this definition of tax dependent. He is 18 years of age; he was claimed by his father as a tax dependent in 1971; and the father's household is not certified for food stamp assistance. Notwithstanding the fact that he is on public welfare assistance, he must be found ineligible because he was a tax dependent and this is true even though such finding will defeat the expressed policy of Congress when it passed the Food Stamp Act. [Appendix, at 74]

Consequently, appellee Valdez, his wife and one month old baby were left without sufficient resources for adequate food sustenance. [Appendix, at 50-52]

Appellee Kristi Schultz validly was claimed as a "tax dependent" for 1971, even though her parents refused to provide her with any support after June, 1971. Although she continuously could demonstrate that she received no support whatever from June, 1971 throughout 1972, she was denied food stamps in 1972 because she was claimed as a "dependent" for the previous year. As a result, appellee Schultz was completely penniless and was forced to subsist exclusively on wild sweet potatoes and water, thereby making her severely malnourished and ill for a four month period. [Appendix, at 58-59] Appellee Robert Broderson similarly was denied food stamp relief in 1972 for himself, his wife, and their newly-born child. Although his employment provided the household with merely $110 in monthly income, and although he received no support from his parents in 1972, the important food stamp aid he sought for his family was withheld because he was claimed as a "tax dependent" in 1971. [Appendix, at 56-57]

Appellants' only rationalization for the inflexible one year carry-over—after the tax year for which the dependency claim was made—further serves to demonstrate how arbitrary the tax dependency provision is. Appellants would erroneously have this Court believe that the one year carry-over is "the only practical means" by which to determine whether a tax dependency claim will be taken for that carry-over year. [Appellants' Brief, at 13, n. 7] Their assertion, however, flies in the face of reality and merely underscores the entire irrationality of the tax dependency provision.

Since "most people . . . file their income tax in April or some time in the beginning of the year for the previous tax year" [Appendix B to this Brief, at 17b], at the end of the carry-over year (December 31) it is impossible to determine whether a dependency claim will actually be taken for that carry-over year. Consequently, the one year carry-over ineligibility period does not in any way aid in determining whether there will be a continuation of the tax dependency status. The following hypothetical is illustrative:

> Taxpayer-parent B files his income tax claims every April. In April, 1972, taxpayer-parent B claimed child A as a "tax dependent" for 1971. Consequently, child A became ineligible during the carry-over year (ending on December 31, 1972). By the end of the carry-over year, however, no tax returns had been filed for tax year 1972 since those returns will be filed in April 1973.

Obviously, the one year carry-over has no utility whatever in determining whether a tax dependency claim actually will be taken for the carry-over year. Indeed, the carry-over provision serves no purpose at all, other than to arbitrarily and inflexibility eliminate scores of poor people from the food stamp rolls.[19] Since the tax

[19] In *Shapiro v. Thompson* 394 U.S. 618 (1969), the Court—"even under [the] traditional equal protection tests" [394 U.S., at 638]—held that the one year waiting period for new residents was a Constitutionally impermissible denial of welfare assistance. Although the one year durational residence requirement did serve to deter "fraudulent receipt of welfare benefits" [394 U.S., at 637], the Court deemed it "unreasonable to accomplish this objective by the blunderbuss method of denying assistance to all indigent newcomers for an entire year." [*Id.*] By contrast, plaintiff-appellees' position in this case is even stronger: the one year carry-over serves absolutely no purpose at all. Although the tax dependency provision's one year carry-over also utilizes the "blunderbuss method" of eliminating all former "tax dependent"

dependency provision is an entire nullity during the tax year for which the dependency claim was made [see *supra*, at 6], and since the provision arbitrarily, rigidly and for no purpose whatever denies aid during the succeeding carry-over year, the provision is in clear violation of the Constitution's equal protection requirements.

4. *All household members, in a household containing a "tax dependent", are denied food stamp aid even though they are prohibited from demonstrating that the support provided to the "dependent" is of little or no benefit to them.*

All members of a household containing a previous year's "tax dependent" are excluded from the Food Stamp Program. Even when such household members can convincingly demonstrate that they received absolutely or virtually no benefit from the contributions by the

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indigents for one year, no countervailing governmental objective colorably is advanced by the carry-over ineligibility period. Moreover, as in *Shapiro*, "less drastic means are available" [*Id.*] to fullfill Congressional objectives under the tax dependency provision. A hearing can be held to determine whether a household, containing a former "tax dependent", presently has access to nutritional adequacy, or whether such household is currently being supported by the taxpayer. [See 7 C.F.R. §271.1(o)] Moreover, since the applicant household's word is taken at face value—when a member thereof indicates that he was written off as a "dependent" for the previous tax year [see Appendix B, at 22b-23b]—there is no reason why the household's word cannot be accepted about its likely current dependency status or, in fact, whether it has actual access to sufficient resources to obtain a nutritionally adequate diet. As with all other eligibility factors, an applicant's information can be subjected to verification and investigation procedures. [See 7 C.F.R. §§271.4(a)(2)(ii) and (iii)] Consequently, the one year ineligibility carry-over is unreasonable and violates appellees' rights to equal protection.

taxpayer—either because the contributions are made solely to and for the benefit of the "dependent", or because the contributions to the "dependent" are so small that they cannot be apportioned to other household members—they are entirely ineligible for Federal food relief. During the three-judge District Court argument, the appellants verified this inequity:

> JUDGE ROBB: . . . [Y]ou say this statute was intended to furnish food to low income families, correct?
>
> MR. BRICKFIELD: Yes, correct.
>
> JUDGE ROBB: Yet, you say, although you have a family, we will say, with eight or ten people in it, if one of those people happened to be taken as a tax deduction, the family is, ipso facto, not a low income family, right?
>
> MR. BRICKFIELD: No, sir. They are not an eligible family. They may still be a low income family . . . [Appendix B to this Brief, at 19b]

Regardless of the relationship between the "tax dependent" and other household members; regardless of the relationship between the taxpayer and the "non-dependent" members of the "dependent's" household; regardless whether the "tax dependent" has an obligation, or voluntarily decides, to support other household members; and regardless of the "dependent's" ability to sufficiently apportion support payments to other household members, everyone in the "dependent's" household is blindly and automatically denied food stamp aid. Particularly since the status of these variable conditions can be easily determined, and since those conditions are of utmost importance to household members' economic and nutritional circumstances, it is irrational and arbitrary to sweepingly deny Federal food sustenance in such

an indiscriminate manner. Consequently, the tax dependency provision violates indigents' rights to equal protection.

B. The Tax Dependency Provision Is Not Reasonably Related to Any Legitimate Governmental Purpose.

Although the tax dependency provision seeks to exclude currently non-needy households from Food Stamp Program participation [Appellants' Brief, at 9-10], the provision is unreasonably related to that objective. In the guise of eliminating the rich from Program participation, the tax dependency provision rigidly and arbitrarily eliminates thousands of poor people, including the appellees, from health-vital food aid. As District Judge Hart aptly phrased it during the argument before the three-judge District Court:

> Counsel, don't we really get down to this in this case: That Congress recognized a small evil. In an effort to excise that evil, instead of using a scalpel, it used a meat cleaver, and it just cut much too broad and deep throughout the needy people. Really, someting it didn't intend to do. Certainly Congress never intended to cut out people like these Plaintiffs in this case.[20] [Appendix B to this Brief, at 18b]

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[20] At the end of the hearing, District Judge Hart expressed the same idea somewhat less delicately. After inquiring from the Government's counsel as to whether he served in the military, and after said counsel responded in the negative, Judge Hart stated: "Well, you won't understand this, but you have told us what Congress aimed at. Whoever was marking the target was surely waving Maggie's drawers—meaning, a complete miss." [Appendix B to this Brief, at 26b]

Insofar as Food Stamp Program eligibility operates exclusively on the basis of *current circumstances*[21] the

[21] That household participation in the Program is based on *current circumstances* is obvious. Certification periods in the Program are designed so that the most recent information is used to determine accurately a household's continued eligibility and proper benefit levels. The regulations require that:

> The State agency shall provide for periodic recertifications of participating households to determine changes in status which would affect the continued eligibility of the household, the amount of its coupon allotment, or its purchase requirement. [7 C.F.R. §271.4(a)(4)]

Certification periods for households in which everyone is on public assistance coincide with their welfare certification periods so that the rigorous eligibility verification process is not duplicated. [See 7 C.F.R. §§271.4(a)(4)(ii) and 271.4(a)(1)] For non-public assistance households, certification periods last normally only three months to assure that the most current information is used to determine continuous eligibility. [7 C.F.R. §271.4(a)(4)(iii)] However, "[c]ertification may be for less than 3 months when there is a possibility of frequent changes in household status." [7 C.F.R. §271.4(a)(4)(iii)(a)] Longer certification periods are the exception, rather than the rule, and are provided only "if there is little likelihood of change in household status," when "circumstances are expected to remain stable," or under other unusual situations when reliable current information equitably can be provided only on a more long-term basis. [7 C.F.R. §§271.4(a)(4)(iii)(b), (c) and (d)]

As a result, information concerning the Program's two eligibility criteria—(1) need, as determined by a household's income and resources [7 U.S.C. §2014(b)], and (2) willingness to register for, and accept, work [7 U.S.C. §2014(c)]—is kept as up-to-date as possible. Consequently, even if a household was not poor one year ago, it is entitled to food stamp relief if it currently falls within the income and resource eligibility standards. Similarly, a household, which previously refused to comply with the work requirement, is provided food stamp aid if it currently is willing to abide with the requirement. [7 C.F.R. §271.3(e)(2)(i)] In sum, the Food Stamp Program deals exclusively with individuals' current circumstances.

tax dependency provision sought to eliminate *presently* non-needy households from food stamp aid. Since households' participation in the Program is based on their present eligibility status, the provision necessarily had to be reasonably related to such households' recent circumstances. But, although the provision was aimed at excluding households which are currently unneedy, it completely missed the mark: even under optimum conditions, the provision is wholly unrelated to an assessment of a household's present needs. Indeed, the provision is not even reasonably related to a household's past needs.

From the language of the tax dependency provision, it would seem that it was designed to eliminate persons who are *currently* unneedy. The provision *allegedly* eliminates a household containing a "tax dependent" over 18 years of age *"during the tax period such dependency is claimed* and for a period of one year after expiration of such tax period." [7 U.S.C. §2014(b)] (emphasis added) *In actual implementation,* however, contrary to the Program's entire framework, the operation of the tax dependency provision bears absolutely no correlation to a "dependent" household's current circumstances: during the tax period of the dependency claim, the provision is entirely non-functional. This is because the vast majority of our nation's taxpayers file their Federal income tax forms in March or April for the previous tax year. [See Appendix B to this Brief, at 17b; see, also Appendix, at 81] By the time the tax dependency declaration is made, the tax year for which it was made will have ended several months earlier. Consequently, the tax dependency provision cannot operate on the basis of current circumstances. With regard to the year for which the tax dependency claim is made, therefore, the provision is an entire nullity.

Obviously, the tax dependency provision is totally at odds with the Food Stamp Program's framework of dealing with current needs, and the provision completely fails to fulfill its avowed purpose of ferreting out presently unneedy households from the food stamp rolls.[22] Indeed, while it is peradventure clear that the

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[22] That the tax dependency provision is so unreasonably unrelated to its statutory objective is hardly surprising. As in *Moreno v. United States Department of Agriculture*, 345 F. Supp. 310 (D.D.C. 1972), *prob. Juris. noted*, ___ U.S. ___, 93 S.Ct. 526 (1972), "[t]he fact is that we are confronted, as was the Secretary of Agriculture, with hasty, last minute Congressional action—'a child born of the silent union of legislative compromise.'" [345 F. Supp., at 315] Throughout the entire legislative history of the 1971 Food Stamp Act amendments [P.L. 91-671 (Jan. 11, 1971), 84 Stat. 2048], there was no discussion or debate at all on the tax dependency provision. Although the proposed provision's existence was listed in one sentance in each of five places [House Report No. 91-1402, 91st Cong., 2d Sess. (1970), at 8 and 16; Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 16, 1970), at H 11818 (Congressman Poage) and H 11861 (Congressman Quie); Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 31, 1970), at S 21682 (Senator Ellender)], and although its intended purposes seem clear [See appellants' Brief, at 10, n. 5], the provision was never discussed or debated. Indeed, when the House Committee on Agriculture—which formulated the measure—first brought the provision to the floor of the House on December 16 [see Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 16, 1970), at H 11818-H 11873], and when it returned after Conference to the House on December 30 [see Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 30, 1970), at H 12541-H 12548] and the Senate on December 31 [See Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 31, 1970), at S 21681-S 21694], the Congress was in a rush to adjourn before the New Year. Because of those time constraints, and since other parts of the Food Stamp Act amendments were much more controversial, Congress never actually considered the tax dependency provision.

provision's operation is wholly unrelated to a household's current or future needs, it is similarly clear that the provision's operation is not even reasonably related to a household's past needs. Since the Internal Revenue Code fails to define any minimum amount of support that must be provided as a condition for making a tax dependency claim—but merely requires that the taxpayer provide the "dependent" with over half of his support [26 U.S.C. §§151(e) and 152(a)]—a tax dependency declaration for the previous year implies nothing about the actual availability to nutritional adequacy that a "dependent" household had during that past year.

For households containing a non-student "dependent", the provision's operation is most definitely unrelated to an assessment of such households' past needs. Non-student "dependents"—who are not blessed with sufficient parental resources to go to college, and who are not, unlike their student counterparts, exempted from the work requirement [7 U.S.C. §2014(c)]—are by definition, based on their own income, poor: they may not have an income that exceeds $750 a year. [26 U.S.C. §151(e)] Consequently, *even under optimum economic conditions*, a parent need have provided his child with only $751 for the previous year to write him off as a "tax dependent." (Compare this cumulative annual income to the annual income eligibility standard of $2136 for a one-person household in the Food Stamp Program [37 Fed. Reg. 7724]; moreover, compare this income to the annual eligibility standard for larger households such as the ones many non-students, such as appellees, reside in. [See *supra*, footnote at 7.]) It is obvious, therefore, that the tax dependency provision's operation bears no reasonable relationship to a non-student "dependent" household's *past* needs, and that the provision eliminates

many impoverished households from Food Stamp Program participation while unneedy households are excluded *only* by coincidence.[23]

Even when the tax dependency provision *by coincidence* eliminates unneedy households from Food Stamp Program participation, it accomplishes such exclusions in a most unreasonable and arbitrary manner. Those unneedy households that *by coincidence* are denied food stamp aid due to the tax dependency provision *are excluded from Program participation for only about two-thirds of a year, while the provision permits them to receive aid during the rest of the year.* This results because the carry-over year of ineligibility almost always terminates approximately three months before the filing

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[23] Whereas the tax dependency provision eliminates many impoverished households from Food Stamp Program participation while unneedy households are excluded *only by coincidence*, scores of households which have real access to nutritional adequacy are unaffected by the provision. Children residing in households apart from their wealthy parents can continue receiving food aid if they convince their parents to refrain from declaring them as "dependents" in their income tax returns. Moreover, if children have other wealthy relatives who can provide them with support, and who even declare them as "dependents", such children are still entitled to food stamp aid. The consequent inequities are obvious: whereas, for example, appellee Lula Mae Murry's ex-husband provides appellee and her children with their total monthly income of $57.50 (which is all he can provide after he supports his new wife and their two children on a laborer's salary) and then rightfully filed tax dependency claims for appellees' household members [see Appendix, at 29-31], numerous affluent parents are providing their children with no support and, consequently, have made no dependency claim. Although appellee Murry's household has no real access to adequate food sustenance, and although the latter households apparently do, appellee Murry and her children are denied food stamp aid while the latter households receive such relief.

of the next income tax returns, leaving a hiatus of several months during which the tax dependency provision is inoperative. The following is illustrative:

> Wealthy taxpayer-parent B files his income tax returns every April (like most taxpayers [see Appendix B to this Brief, at 17b]). In April, 1972, he claimed his 18 year old child A as a "tax dependent" for calendar year 1971. Starting in mid-April 1972, A's household was denied food stamp aid because A had been declared a "tax dependent" for the previous year. On December 31, 1972, the carry-over year of ineligibility ended and, on January 1, 1973, child A's household became eligible again for food stamp relief. Food stamps were provided to A's household through mid-April, 1973, at which time taxpayer B's income tax returns for calendar year 1972—claiming child A as a "tax dependent"—were filed, thereby making A's household ineligible for the Food Stamp Program through December 31, 1973. (The same cycle occurs annually.)

Consequently, even when the tax dependency provision *by coincidence* accomplishes its alleged objective (of excluding unneedy households from Food Stamp Program participation), it accomplishes that objective in a most haphazard, unreasonable and arbitrary way.

The tax dependency provision's unreasonable relationship to its apparent purpose is further manifested by the requisite minimum age that a "dependent" must have to make the provision operate. It is only households with "dependents" *18 years of age or older* which are excluded from Food Stamp Program participation. But, contrary to the thrust of the tax dependency provision, most states in the country have terminated parents' general support obligations by their children's eighteenth

birthday. As appellees have set forth in Appendix A to this Brief, out of 51 nationwide jurisdictions (including the District of Columbia): 31 of them have terminated parents' general support obligations by the children's eighteenth birthday; two of them have terminated such support obligations upon the nineteenth birthday; and the other states have terminated those support obligations upon the twenty-first birthday. Consequently, in 30 states, and in the District of Columbia, the impoverished "tax dependent" who has just turned 18, thereby disqualifying his whole household from food stamp assistance, is legally unable to compel any further support from his parents. In two states the "tax dependent" household is denied food stamps even though the "tax dependent", if he is 19 years of age or over, is unable to compel further support from his parents. Finally, in the remaining 18 states, a "tax dependent" household is denied food stamps even though the 21-year old "dependent" is legally unable to compel further support from his parents. Clearly, this unreasonable and anomalous result could not have been actually intended by Congress. [Cf. *Lewis v. Martin*, 397 U.S. 552 (1970); *King v. Smith*, 392 U.S. 309 (1968).]

It is peradventure obvious, therefore, that the tax dependency provision does not reasonably accomplish its objective of excluding unneedy households from the Food Stamp Program. Moreover, it is similarly obvious that the provision does not reasonably foster greater parental responsibility for children's nutritional and economic well-being. Although *any denial of assistance to the poor, for whatever arbitrary reason, may—where possible—have a coincidental effect of causing more shared family financial responsibility*, it is clear that the tax dependency provision does not reasonably accom-

plish this purpose. Quite the opposite; the tax dependency provision, as is evident from the appellees, in actual operation tends to thwart that objective.

Appellee Lula Mae Murry, for example, is denied Food Stamp Program eligibility for herself and her children because her ex-husband provides appellee's household with their only income (and, therefore, properly has claimed appellee's household members as "dependents" for income tax purposes). Appellee's ex-husband cannot provide any further support to appellee's household because he also supports his new wife, and their two children, on a meager laborer's salary. [Appendix, at 29-31] As a result, then, of her ex-husband's $57.50 monthly support, appellee's five-person household has lost $132 in monthly food stamp benefits. [37 Fed. Reg. 7724] Similarly, appellee Victoria Alderete receives $105 in monthly support from her ex-husband (who, as a result, properly claimed appellee's household members as "tax dependents"). [Appendix, at 34-36] Consequently, appellee's six-member household has lost $152 in monthly food stamp allotments. [37 Fed. Reg. 7724] For appellees Murry and Alderete, therefore, it would be advantageous if their ex-husbands discontinued their provision of support.[24] In sum, the tax dependency

[24] For all of the other appellees herein, it is clear that the tax dependency provision's denial of food stamp aid had no positive effect on their families' support to them. For appellee Valdez, as an example, it is financially impossible for his parents to provide him with support; although they are ineligible for food stamp aid, appellee Valdez's parents are poor and are heavily in debt. [Appendix, at 50-52] And for appellees Lee and Nevarez, their children's fathers have disappeared and their whereabouts are unknown [Appendix, at 32-33, 60-62]; they, like all the appellees herein, will not receive greater support as a result of the tax dependency provision. Clearly, the provision frequently tends to frustrate, or is essentially irrelevant to, further family shared financial responsibility.

provision is not reasonably related to the fostering of greater family support for indigents and, indeed, it is not reasonably related to any legitimate governmental objective.

III.

THE TAX DEPENDENCY PROVISION VIOLATES APPELLEES' RIGHTS TO PROCEDURAL DUE PROCESS.

A. The Tax Dependency Provision Conclusively, Irrebuttably and Erroneously Presumes That a Household, Containing a "Tax Dependent" of the Previous Tax Year, Currently Has Access to a Nutritionally Adequate Diet.

As reflected in the Food Stamp Act's Declaration of Policy [7 U.S.C. §2011], Congress formulated the Food Stamp Program in order to alleviate hunger and malnutrition amongst currently needy households throughout the country. The Program was designed for "households whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet." [7 U.S.C. §2014(a)] As a result, household eligibility for the Program was grounded on two criteria: (1) the household must be currently needy [7 U.S.C. §2014(b)]; and (2) certain members of the household must register for, and accept, suitable work. [7 U.S.C. §2014(c)]

To ascertain whether a household meets the first of these criteria—i.e., whether a household is currently needy—the Food Stamp Act requires the Agriculture Secretary to "establish uniform national standards of eligibility," which "at a minimum, shall prescribe the amounts of household income and other financial

resources, including both liquid and nonliquid assets, to be used as criteria of eligibility." [7 U.S.C. §2014(b)] Thus, if a household's income and resources are within the eligibility standards promulgated by the Agriculture Secretary, that household is determined to be currently needy and, if it complies with the work requirement, is entitled to food stamp relief. [See 7 C.F.R. §§271.3(b) and (c); 37 Fed. Reg. 7724]

The tax dependency provision is contained within the "need" eligibility subsection of the Food Stamp Act. [7 U.S.C. §2014(b)] As evinced by its location in the statutory framework, and as verified by its sparse legislative history, the tax dependency provision was enacted because Congress presumed that any household—containing a member who had been claimed as a "tax dependent" for the prior year—had sufficient current income and resources "to purchase a nutritionally adequate diet. . ." [7 U.S.C. §§2011, 2013(a), 2014(a) and 2016(a)] The House Report bears this out. [See House Report No. 91-1402, 91st Cong., 2d Sess. (1970), at 8.] In that report, the House Committee on Agriculture, which formulated the provision, compared the then-existing Food Stamp Act [P.L. 88-525] with H.R. 18582—the Committee's bill.[25] Under the category of "income eligibility," the comparison read as follows [House Report, *supra*, at 8]:

[25] In every single respect, the enacted subsection here at issue [7 U.S.C. §2014(b)] stems from and contains the exact language of the House Committee on Agriculture's bill. [H.R. 18582]

Item	Present law Public Law 88-525	H.R. 18582
9. Income eligibility	States set standard on maximum income, must be consistent with income standard used by State in own welfare program. Sec. 5(b)	Secretary to establish uniform standards in consultation with HEW. Households containing an 18-year-old who is taken as a tax dependent by another household are ineligible. Secretary directed to establish standards for Puerto Rico, Guam and Virgin Islands. Sec. 4(b)

The Committee clearly presumed that statutory "tax dependent" households had access to adequate income and were, therefore, not in need of food relief. [See, also, Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 16, 1970), at H11861—where Congressman Quie, in a chart, compared the pending bills and included the tax dependency provision in the division relating to maximum allowable resources for Program eligibility.] Indeed, as appellants forcefully pointed out [see appellants' Brief, at 10, n. 5], the tax dependency provision stemmed from Congressional concern about non-needy households participating in the Food Stamp Program; the provision was enacted as a measure for "defining those people who are needy." [Appendix B to this Brief, at 5b]

For Food Stamp Program purposes, the definition of need is clearly set forth. Currently the income eligibility criteria for the contiguous United States and the District of Columbia are:

Household Size	*Monthly Income*
1	$ 178
2	233
3	307
4	373
5	440
6	507
7	573
8	640
each additional person	+53

[37 Fed. Reg. 7724]

In addition, a household without a member 60 years of age or more may have only $1500 in resources; a household containing one or more members over 60 years of age may have $3000 in resources. [7 C.F.R. §271.3(c)(4)]

A household which contains no one claimed as a statutory "tax dependent" in the previous year can flexibly and reasonably demonstrate that it falls within this standard of need. In contrast, a household containing a "tax dependent" of the previous year is rigidly, conclusively and irrebuttably presumed to be neither poor nor in need of food relief, regardless of its actual impoverished circumstances. At no stage in the administrative process–whether it be during application intake [7 C.F.R. §271.4(a)(2)(i)], or during scheduled interviews between the agency and applicant [7 C.F.R. §271.4(a)(2)(ii)], or during the verification process [7 C.F.R. §271.4(a)(2)(iii)], or even during a "fair hearing" [7 C.F.R. §271.1(o)]–can a household, containing a "tax dependent" of the previous year, relevantly demonstrate that it is poor and without access to the funds prescribed in the Program's income-resource eligibility standard. Indeed, as Acting Food and Nutrition Service Administrator Howard P. Davis stated:

> [I]n the case of households which have initially been determined to be ineligible for participation in the program on the basis of tax dependency, there are no factual issues to be presented or challenged by the household at such a hearing, other than the issue of whether or not a member of the household has been claimed as a dependent child by a taxpayer who is not a member of a household eligible for food assistance (a fact the household, in most cases, already will have disclosed in its application). [Appendix, at 83; see, also, the fair hearing decision of appellee Valdez, Appendix, at 72-75]

As a result of the tax dependency provision, thousands of needy households summarily and inequitably have been denied essential food stamp relief. This results from the fact that the conclusive presumption–that a household is not needy if a member therein was declared a "tax dependent" for the previous year–is very frequently *erroneous*: there is simply no correlation between a household's *present* need for food relief and the fact such a household contains an individual who was claimed as a "tax dependent" *for the prior year*. The situations of the appellees clearly illustrate the irrebuttable presumption's fallacy: (1) the taxpayer may have made a fraudulent tax claim (as was the case with appellees Lee, Beavert and Nevarez); (2) the support provided or available to the "dependent" may be wholly insufficient "to purchase a nutritionally adequate diet" [7 U.S.C. §2014(a); see, also, 7 U.S.C. §§2011, 2013(a) and 2016(a)] (as is the case with appellees Murry and Alderete); (3) the taxpayer may be currently unable or unwilling to contribute to the "tax dependent", even though the taxpayer provided such support in the previous year (as is the case with appellees Valdez, Broderson and Schultz); (4) the members of the "tax dependent's" household may receive

absolutely or virtually no benefit from the taxpayer's contributions–either because the contributions are made solely to and for the "dependent" or because the contributions to the "dependent" are so small that they cannot be apportioned to other household members (as is the case with appellees Murry and Alderete).

All of the appellees, therefore, have been denied food stamp eligibility on the basis of the erroneous presumption that their households (by virtue of containing members claimed as "tax dependents" for the prior year) are not needy–a presumption they were not allowed to rebut or contest. Consequently, appellee Schultz was denied food stamp aid even though she is penniless and without any income; appellee Murry's five-member household cannot obtain food stamps even though her $57.50 monthly income is far below the $440 eligibility standard [37 Fed. Reg. 7724]; appellees Lee, Alderete and Nevarez cannot receive food stamps for their six-person households even though their monthly incomes–$23, $205 and $215 respectively–are far below the $507 eligibility standard [*id.*]; and appellees Valdez, Broderson and Beavert are denied food stamps for their three-person households even though their monthly incomes–$224, $110 and $224 respectively–are below the $307 eligibility standard. [*Id.*] None of the appellees have true access to nutritional adequacy.

B. The Conclusive, Irrebuttable and Erroneous Presumption Established By the Tax Dependency Provision Violates Appellees' Rights to Procedural Due Process of Law.

If a statutory presumption is rational, its application may be useful and is permissible if it is rebuttable.[26] [See *Heiner v. Donnan*, 285 U.S. 312, 318, 329 (1932), and cases cited therein.] However, it is a well-settled rule in Constitutional law that a statutory or administrative provision violates the due process clause of the Fifth and/or Fourteenth Amendments when it establishes a conclusive, irrebuttable presumption that may be inaccurate, and that adversely affects the rights of private parties.[27] Thus, in *Schlesinger v. Wisconsin*, 270 U.S. 230

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[26] In this case, even if the presumption—that a household containing a "tax dependent" of the previous year is neither poor nor in need of Federal food assistance—were rebuttable, it would still be impermissible. Since a previous year's tax dependency claim of a household member is wholly unrelated to a household's *current needs*; since a tax dependency claim fails to imply that the "dependent" received any minimum amount of support; since the dependency claim of one household member implies nothing about the support available to the "dependent's" entire household; and since persons over 18 years of age usually are unable legally to compel the provision of support from their parents, it is irrational even to rebuttably presume that households containing a previous year's "tax dependent" are neither poor nor in need of Federal food aid. It is wholly arbitrary and capricious, however, to make that presumption conclusive and irrebuttable.

[27] Procedural due process is applicable whenever governmental action denies or terminates an individual's rights or benefits. [See, e.g., *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare benefits); *Perry v. Sindermann*, 408 U.S. 593 (1972) (teachers' employment contracts); *Bell v. Burson*, 402 U.S. 535 (1971) (driver's license and motor vehicle registration); *Stanley v. Illinois*, 405 U.S. 645 (1972) (custody of a child); *Escalera v. New York City Housing Authority*, 425 F.2d 853 (2d Cir. 1970), *cert. denied*, 400 U.S. 853 (1971) (housing benefits).]

(1926), the Supreme Court held that the State of Wisconsin's inheritance tax statute, which "conclusively presumed" that any gift made within six years of the donor's death was made in contemplation of death, and therefore subject to tax, was unconstitutional as violative of the due process clause in the Fourteenth Amendment.

A similar Federal taxing provision was held to violate the Fifth Amendment's due process clause in *Heiner v. Donnan*, 285 U.S. 312 (1932). After pointing out that it was not "material that the Fourteenth Amendment was involved in the *Schlesinger* case, instead of the Fifth Amendment," since the "restraint imposed upon legislation by the due process clauses of the two amendments is the same" [285 U.S., at 326], this Court provided a succinct explanation as to why it could not uphold conclusive statutory presumptions:

> [W]hether the . . . presumption be treated as a rule of evidence or of substantive law, it constitutes an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality, and the result is the same, unless we are ready to overrule the *Schlesinger* case, as we are not; for that case dealt with a conclusive presumption and the Court held it invalid without regard to the question of its technical characterization. This Court has held more than once that a *statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment.* [285 U.S., at 329] (emphasis added)

In *Hoeper v. Tax Commission*, 284 U.S. 206 (1931), this Court similarly invalidated a state statute which conclusively presumed that income earned by wives was actually income earned by their husbands. Under that statute, therefore, husbands would have had to pay more

in their income taxes. In striking down the statute, the Court said:

> We have no doubt that, because of the fundamental conceptions which underlie our system, *any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the Fourteenth Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income.* [284 U.S., at 215] (emphasis added)

While the *Schlesinger, Heiner* and *Hoeper* decisions reflect a prohibition of potentially erroneous, conclusive statutory presumptions in the tax law area, it is clear that the unconstitutionality of such presumptions is not limited to tax matters. In *Stanley v. Illinois*, 405 U.S. 645 (1972), this Court dealt with the claim of an unwed father whose children, upon the death of their mother, were declared wards of the State and placed in guardianship. The Court held that such a statutory scheme violated the father's Constitutional right to due process and equal protection in that it was based on an irrebuttable presumption that unmarried fathers in general, and Stanley in particular, were unsuitable and neglectful parents, and applied no such presumption in the case of married fathers, the latter being accorded a hearing on their fitness. In so ruling, the Court emphasized the inherent dangers of conclusive presumptions:

> Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when *it explicitly disdains present realities* in deference to past formalities, it needlessly risks running roughshod over

> the important interests of both parent and child. It therefore cannot stand. [405 U.S., at 656-657] (emphasis added)

The Court also pointed out how potentially erroneous, conclusive statutory presumptions can actually defeat a legislature's stated goals. In *Stanley*, the legislative goals were to protect "the moral, emotional, mental and physical welfare of the minor and the best interests of the community. . . ." [Ill. Rev. Stat. c. 37, §701-2] Comparing the legislature's stated goals to the provision under consideration, the Court said:

> We observe that the State registers no gain towards its declared goals when it separates children from the custody of fit parents. Indeed, if Stanley is a fit father, the State spites its own articulated goals when it needlessly separates him from his family.
>
> * * * * *
>
> [N]othing in this record indicates that Stanley is or has been a neglectful father who has not cared for his children. Given the opportunity to make his case, Stanley may have been seen to be deserving of custody of his offspring. Had this been so, the State's statutory policy would have been furthered by leaving custody to him. [405 U.S., at 652-653, 655]

The findings in the *Stanley* decision are directly analogous to the present case. In this case, the tax dependency provision establishes a conclusive presumption that actually results in a frustration of the Food Stamp Act's stated goals. [See 7 U.S.C. §2011] The Food Stamp Act seeks to eliminate hunger and malnutrition by providing needy persons with food relief so that they can obtain nutritionally adequate diets. [See 7 U.S.C. §§2011, 2013(a), 2014(a) and 2016(a)] But

the tax dependency provision denies health-vital benefits to the impoverished appellees by means of a conclusive presumption that absolutely prohibits them from showing that they are the very persons for whom the Program was designed. Although the Program was intended to help such needy persons, the tax dependency provision irrebuttably presumes that the appellees, as members of households containing individuals claimed as "tax dependents" for the previous year, are currently not poor or in need of food relief and, therefore, renders them ineligible.

The decisions in the above-cited cases, as well as a multitude of other rulings by this Court and lower courts, leave no room to doubt that a conclusive statutory presumption, that may be erroneous, and adversely affects the rights of persons, is violative of procedural due process. See, e.g., *Bell v. Burson*, 402 U.S. 535 (1971), wherein this Court struck down a state statute that conclusively presumed a motorist to be guilty of faulty driving, thereby suspending his motor vehicle registration and driver's license, if such person got into an accident, was uninsured, and posted no bond (despite no evidence being adduced about the motorist's fault in the accident); *Carrington v. Rash*, 380 U.S. 89 (1965), wherein this Court struck down a provision in the Texas Constitution that prohibited members of the armed forces from voting, on the conclusive presumption that such servicemen were not *bona fide* residents;[28] *Dunn v. Blumstein*,

[28] In *Remillard v. Carleson*, 325 F. Supp. 1272 (N.D. Calif. 1971, *aff'd.*, 406 U.S. 598 (1972), a three-judge District Court struck down a California welfare regulation that provided that absence of a father, caused by his military duties, could never be "continued" absence so as to authorize Aid to Dependent Children payments. The Court held, contrary to the arguments of the state

405 U.S. 330 (1972), wherein this Court struck down a statute that conclusively presumed that people, who resided in a county for less than three months, and who resided in the State for less than one year, were not *bona fide* residents and, therefore, were not entitled to vote; *United States v. Bowen*, 414 F.2d 1268 (3d Cir. 1969), wherein the Court of Appeals struck down a regulation that conclusively presumed that military notices sent in the mails were received by the addressees. Cf. *Reed v. Reed*, 404 U.S. 71, 76-77 (1971).

The decision in *Bell v. Burson, supra*, is particularly instructive for this case. In *Bell*, the Court was confronted with a Georgia statute that required the suspension of the motor vehicle registration and driver's license of an uninsured motorist involved in an accident, unless he posted security to cover the amount of damages

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defendants, that the California regulation violated a Federal statutory provision. [42 U.S.C. §606] The Court pointed out that, in interpreting any statute, courts will presume, if at all possible, that Congress would not act in a manner offending due process. The Court then indicated that the California interpretation of the applicable Federal statutory provision raised "serious questions" under the due process and equal protection clauses. While it refused to rule on the Constitutional grounds, the Court found these arguments "sufficiently compelling to warrant the conclusion that Congress did not intend its program to be administered in the manner chosen by California." [325 F. Supp., at 1274] The Court concluded:

> . . . California may not deny benefits under 42 U.S.C. §606 to otherwise eligible children by means of the conclusive presumption embodied in the regulation . . . that a parental absence is not "continued" if occasioned by service in the armed forces of the United States. Some military absences may indeed be temporary. But other military absences give rise to the needs the statute was designed to fill. Each case must be considered in light of all relevant factors. [*id.*]

claimed by aggrieved parties in the accident report. Pursuant to that statute, any administrative hearing prior to suspension *excluded consideration of the motorist's fault or liability for the accident.* The only factors considered were whether the motorist or his vehicle were involved in the accident, whether the motorist failed to comply with the laws relating to posting of security, and/or whether the motorist failed to fall within any of the exceptions of the statute (such as if the motor vehicle was operated without the owner's permission). Upon a demonstration of these factors, but without adducing any evidence about the motorist's fault or liability for the accident, the motorist's license and registration were suspended.

Similarly in the "fair hearing" process accorded appellees and their class, no consideration is given to the question of whether, in fact, households containing a "tax dependent" of the previous year have access to nutritional adequacy. The only relevant evidence that may be adduced by appellees include: whether members of their household were declared as "tax dependents" for the past year; whether the "dependent" is 18 years or older; and/or whether the taxpayer-parent resides in another household which is ineligible for food stamps. [See Appendix 72-75, 82-83] Upon a demonstration of these factors, a household is altogether denied Federal food sustenance—regardless of that household's poverty, hunger and malnourishment. Particularly since the household's tax dependency status was not of its own doing and was essentially out of its control—whereas in *Bell,* the petitioner previously could have acquired driver's insurance, thereby stopping the operation of the Georgia statute—it is clear that the irrebuttable presumption in this case is at least as Constitutionally-defective as the one in *Bell.*

C. The Tax Dependency Provision's Conclusive, Irrebuttable and Erroneous Presumption Cannot Be Justified on the Basis of Administrative Convenience or Fiscal Expedience.

The only value of the tax dependency provision's irrebuttable and conclusive presumption is that its application, to a limited extent, is administratively convenient and fiscally expedient. A local food stamp stamp official can simply reject any food stamp applicant who states that his household contains a "tax dependent" of the previous year. No investigation into available income or resources is necessary, and any "fair hearing" requested by an applicant can be limited to whether the applicant's household contains a member claimed as a "tax dependent" for the past year. Although it is easier to conclusively presume that "tax dependent" households are not currently needy, thereby summarily denying them food stamp eligibility, the due process requirements are not satisfied by a mere showing of administrative convenience; the procedural due process protections of the Constitution are much more meaningful. As the Court stated in *Stanley v. Illinois, supra*:

> [I]t may be argued that unmarried fathers are so seldom fit that Illinois need not undergo the administrative inconvenience of inquiry in any case, including Stanley's. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. *But the Constitution recognizes higher values than speed and efficiency. Indeed, one might say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing*

> *concern for efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.* [405 U.S., at 656 (emphasis added)

Similarly, in *Carrington v. Rash, supra,* this Court was mindful that, by conclusively presuming that all military personnel were not *bona fide* residents of Texas (thereby denying them the right to vote), the Texas Constitutional provision saved election officials from difficult proof problems. Nonetheless, the conclusive, sometimes erroneous presumption could not be deemed Constitutional simply because it was administratively expedient. The Court stated:

> We recognize that special problems may be involved in determining whether servicemen have actually acquired a new domicile in a State for franchise purposes. We emphasize that Texas is free to take reasonable and adequate steps, as have other states, to see that all applicants for the vote actually fulfill the requirements of *bona fide* residence. But this constitutional provision goes beyond such rules. "[T]he presumption here is * * * definitely conclusive—incapable of being overcome by proof of the most positive character." (citing *Heiner v. Donnan,* 285 U.S., at 324) [380 U.S., at 96]

See, also, *Bell v. Burson,* 402 U.S. 535, 540-541 (1971); *Fuentes v. Shevin,* 407 U.S. 67, 90, n. 22 (1972); *Dunn v. Blumstein,* 405 U.S. 330, 350 (1972). Cf. *Reed v. Reed,* 404 U.S. 71, 76-77 (1971); *Gomez v. Perez,* ___ U.S. ___, 41 U.S.L.W. 4174, 4175 (U.S., Jan. 17, 1973).

The preservation of the fisc is also an unsatisfactory justification for implementing a conclusive and irrebuttable presumption that may be harmfully erroneous. The requirements of procedural due process are far more weighty than the saving of Program funds. As the Court stated in *Bell v. Burson, supra*:

> Nor is the additional expense occasioned by the expanded hearing sufficient to withstand the constitutional requirement. " 'While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process.' " *Goldberg v. Kelly*, 397 U.S., at 261, 90 S.Ct., at 1017, quoting *Kelly v. Wyman*, 294 F. Supp. 893, 901 (S.D.N.Y. 1968) [402 U.S., at 540-541]

See, also, *Fuentes v. Shevin*, 407 U.S. 67, 90, n. 22 (1972). Cf. *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969).

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), which held that welfare recipients cannot be terminated from welfare aid prior to the determination of a fair hearing, this Court carefully considered the countervailing interests of procedural due process and fiscal expendiency. The Court concluded that fiscal considerations, although of importance, cannot compromise indigents' rights to procedural due process:

> Appellant does not challenge the force of these considerations [poor people's need to vigilant protection of their due process rights] but argues that they are outweighed by countervailing governmental interests in conserving fiscal and administrative resources. These interests, the argument goes, justify the delay of any evidentiary hearing until after discontinuance of the grants. Summary adjudication protects the public fisc by stopping payments promptly upon discovery of reason to believe that a recipient is no longer eligible. Since most terminations are accepted without challenge, summary adjudication also conserves both the fisc and administrative time and energy by reducing the number of evidentiary hearings actually held.

> We agree with the District Court, however, that these governmental interests are not overriding in the welfare context. The requirement of a prior hearing doubtless involves some greater expense, and the benefits paid to ineligible recipients pending decision at the hearing probably cannot be recouped, since these recipients are likely to be judgment-proof . . . [T]he interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens. As the District Court correctly concluded, "[t]he stakes are simply too high for the welfare recipient, and possibility for honest error or irritable misjudgment too great, to allow termination of aid without giving the recipient a chance, if he so desires, to be fully informed of the case against him so that he may contest its basis and produce evidence in rebuttal."[29] [397 U.S., at 265-266]

[29] The Goldberg Court indicated that "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be condemned to suffer grievous loss..." [397 U.S., at 262-263] Similar to the present case, therefore, the *Goldberg* Court held that the indigent-appellees' rights to due process should be vigilantly protected. The Court reasoned that the impoverished appellees in that case, as is true of the appellees in this case, were very much in need of relief to sustain their health and well-being and, consequently, were entitled to the fullest protection under the due process clause:

> For qualified recipients, welfare provides the means to obtain essential food, clothing, housing and medical care. Cf. *Nash v. Florida Industrial Commission*, 389 U.S. 235, 239 (1967). Thus the crucial factor in this context—a factor not present in the case of the black-listed government contractor, the discharged government employee, the taxpayer denied a tax

Certainly if fiscal and administrative considerations cannot impair indigents' procedural due process rights to a *prior hearing*, then such considerations should not expunge the impoverished appellees' rights *to a hearing*. Yet the conclusive and irrebuttable presumption in the tax dependency provision does precisely that: it prohibits appellees and their class from demonstrating–at any stage of the administrative process–that adequate food resources are not available to them. Since such a showing would not be administratively burdensome or cumbersome, and since administrative mechanisms are currently available to facilitate such a process [see 7 C.F.R. §§271.1(o), 271.4(a)(2)(i), (ii) and (iii); 7 U.S.C. §2019(e)(6)], no valid reason remains for the continued operation of the conclusive and irrebuttable presumption in the tax dependency provision. The provision unnecessarily and unconstitutionally violates appellees' rights to due process of law.

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exemption, or virtually anyone else whose governmental entitlements are ended–is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy. [397 U.S., at 264]

See, also, *Snaidach v. Family Finance Corp.*, 395 U.S. 337, 340-342 (1969); *Fuentes v. Shevin*, 407 U.S. 67, 89 (1972). However, even if no more vigilant protection were accorded appellees' procedural due process rights as a result of their indigency status, it is clear that the irrebuttable and conclusive presumption here at issue is violative of the Fifth Amendment.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,

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APPENDIX A

STATE LAWS ON MAXIMUM AGE FOR MANDATORY GENERAL CHILD SUPPORT

States With 18 Years or Under as the Maximum General Mandatory Age for Parental Support (31)	Statutory and Case Law Citations
1. Alabama	Ala. Code, title 34, §90; *Atkins v. Curtis*, 66 So.2d 455, 458, 259 Ala. 311 (1958)
2. Arkansas	Ark. Stat. Ann. §§57-103 and 45-234; *Petty v. Petty*, 482 S.W.2d 119 (1972) (generally females to 18 and males to 21, but extraordinary circumstances exception)
3. California	Cal. Civil Code §§206 and 25; Penal Code §270(f) (continued support for those incapable of self-support narrowly interpreted, *Levy v. Levy*, 53 Cal. Rptr. 790, 245 Cal. App. 2d 341 (1966)–referring to "mentally retarded child")
4. Colorado	Colo. Rev. Stat. Ann. §43-1-1 (limits support to children under 16)
5. District of Columbia	D.C. Code §§11-1601 *et seq.*, 11-1602(e), and 11-1604 (in the case of male children age is 21); *Jones v. Jones*, 262 A.2d 601 (D.C. App. 1970)
6. Georgia	Ga. Code Ann. (1972 Supp.) §§74-104 and 74-105; *Newton v. Newton*, 222 Ga. 175, 149 S.E.2d 128 (1966)

7. Hawaii	Hawaii Rev. Laws §577-1 (1972 Supp.) (currently no statutory right to child support payments–repeal of Ch. 575, eff. Jan. 1, 1973)
8. Idaho	Idaho Code Ann. §§32-101, 32-1002 and 32-1003 (sets up reciprocal duties of support of "any poor person who is unable to maintain himself or herself by work"); criminal non-support, §18-401 (limited to children under 16); *State ex rel Cromwell v. Panzeri*, 380 P.2d 1064, 1065, 76 Idaho 211 (1955)
9. Illinois	Ill. Rev. Stat. Ch. 68, §24 (penal); Ch. 68, §101 (civil)
10. Iowa	Iowa Code §§252A 3(1), (2) and (3) (limits support to children under 17 eff. July 1, 1973, but parents *may* be liable if older children are likely to become a public chanrge)
11. Kansas	Kan. Stat. Ann. (1972 Supp.) (Ch. 161, §5, July 1, 1972) §§38-101, 60-1610(a) and 23-451 *et seq.; In Re. Robben*, 362 P.2d 29, 30, 188 Kan. 217 (1961)
12. Kentucky	KRS 405.030 (maximum age for statutory liability is 14); *Markham v. Markham*, 461 S.W. 545, 546-547 (1970), holds that under normal conditions the obligation to support a child terminates at the 18th birthday of the child
13. Maine	Me. Rev. Stat. title 15, §2502; title 19, §§211, 214 and 216
14. Maryland	Md. Ann. Code Art. 27, §88; Art. 72A, §1; Art. 88A, §45; *Jones v. Jones*, 262 A.2d 601 (1970)

15. Nevada	Nevada Rev. Stat. §§126.030 and 129.010 (female children until 18 years and male children to 21)
16. New Hampshire	N.H. Rev. Stat. Ann. §§460.22 and 460.23 (parents only required to support children under 16; liable for children between 16 and 21 if by reason of physical or mental infirmity they are incapable of supporting themselves); *State v. Carr*, 107 N.H. 477, 225 A.2d 178 (1966)
17. New Mexico	N.M. Stat. Ann. §§32-1-1 and 13-13-1; *State ex rel. Terry v. Terry*, 453 P.2d 206, 208, 80 N.M. 185 (1969)
18. North Carolina	N.C. Gen. Stat. §§14-322 and 14-325 (penal); §§50-13.4 and 48A-1 and 2 (civil)
19. North Dakota	N.D. Cent. Code §§14-09-08, 14-10-01, 14-09-22 and 14-09-10 (but a poor child may have to be supported up to age 21)
20. Ohio	Ohio Rev. Code §§3103.03 (civil) and 3113.01 (criminal) (but may be liable for handicapped children to age 21)
21. Oklahoma	Okla. Stat. title 10, §§4, 10 and 12; title 15, §13 (may be liable for support of impoverished older children)
22. Rhode Island	R.I. Gen. Laws Ann. §§15-11-5, 15-11-6 and 15-11-7 (may be liable for older children if such children are "unable to maintain themselves")
23. South Dakota	S.D. Code §§25-7-6 and 25-7-7; *McBride v. Lomheim*, 144 N.W.2d 564, 825 S.D. 263 (1966) (liable for older children "unable to maintain themselves by work")
24. Tennessee	Tenn. Code Ann. §§37-256, 39-202 and 23-1201

25. Texas	Texas Penal Code Ann. Art. 602; Civil Art. 4639a, §1; *Byrne v. Byrne*, 398 S.W.2d 432 (Tex. Civ. App. 1965)
26. Vermont	Vt. Stat. Ann. title 15, §202 (if child a student, support may be required to age 21); *Borkmann v. Comm. of Social Welf.*, 128 Vt. 561, 268 A.2d 790 (1970)
27. Virginia	Va. Code Ann. §§20-61 (criminal) and 20-79 (civil)
28. Washington	Wash. Rev. Code §§26.16.205, 26.28.010 and 26.20.030 (criminal); *Gaidos v. Gaidos*, 293 P.2d 388, 390, 48 Wash. 2d 276 (1956)
29. West Virginia	W.Va. Code §48-8-1 (criminal statute but allows for support payments to age 18)
30. Wisconsin	Wis. Stat. §§52.01 and 52.05
31. Wyoming	Wyo. Stat. Ann. §§14.1.1 and 14-18; *Wantulok v. Wantulok*, 214 P.2d 477, 483, 67 Wyo. 22, 21 A.L.R. 2d 572 (1950)

States With 19 Years of Age as the Maximum General Mandatory Age for Parental Support (2)	Statutory and Case Law Citations
1. Alaska	Alaska Stat. §§25.20.010 and 25.20.030 (but statutory duty of "parent and child to maintain each other . . . when poor and unable to maintain themselves")
2. Montana	Mont. Rev. Codes Ann. §§64-101, 61-104, 61-116, 61-112, 61-126 and 61-125 (penal)

States With 20 Years of Age as the Maximum General Mandatory Age for Parental Support (0)	Statutory and Case Law Citations
None	

States With 21 Years of Age as the Maximum General Mandatory Age for Parental Support (18)	Statutory and Case Law Citations
1. Arizona	Ariz. Rev. Stat. Ann. §§14-206 and 1-215
2. Connecticut	Conn. Gen. Stat. Ann. §17-320 (but there may be a further obligation of support where children are paupers and father is able to support them); *Darling v. United States*, 375 F.2d 843, 850, n. 14 (Ct. Cl. 1967)
3. Delaware	Del. Code Ann. title 13, §§501, 502 (penal) and 702 (civil)
4. Florida	Fla. Stat. §§744.03 and 744.13; *Fincham v. Levin*, 155 So.2d 883, 884 (Fla. App. 1st Dist. 1963)
5. Indiana	Ind. Ann. Stat. §§10-1401 and 38-116
6. Louisiana	La. Civil Code Art. 37 and Art. 227
7. Massachusetts	Mass. Gen. Laws Ann. Chap. 117, §9
8. Michigan	Mich. Comp. Laws §401.2
9. Minnesota	Minn. Stat. §§261.01 and 645.45 (3)
10. Mississippi	Miss. Code Ann. §§399 and 681
11. Missouri	Mo. Rev. Stat. §§475.010 and 475.025; *State ex rel Kramer v. Carroll*, 309 S.W.2d 654, 659 (Mo. App. 1958)

12. Nebraska	Neb. Rev. Stat. §38-101; *Waldbaum v. Waldbaum*, 171 Neb. 625, 107 N.W.2d 407, 415 (1961)
13. New Jersey	N.J. Stat. Ann. §§9:2-13 and 2A:4-18
14. New York	N.Y. Dom. Rel. Law §§2 and 32
15. Oregon	Ore. Rev. Stat. §§109.010, 109.510 and 109.100 (possible liability for older children who are "poor and unable to maintain themselves")
16. Pennsylvania	Pa. Stat. §§46:601 (65) and 48:131 (applicable only in divorce or separation proceeding)
17. South Carolina	S.C. Code Ann. §§15-1228, 15-1229 and 62-402
18. Utah	Utah Code Ann. §§78-45-2, 78-45-3, 78-45-4 and 78-45-9

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LULA MAE MURRY, et al.,
Plaintiffs

v.

Civil Action
No. 1412-72

THE UNITED STATES DEPARTMENT
OF AGRICULTURE, et al.,
Defendants

Washington, D.C.
July 19, 1972

The above-entitled cause came on for Hearing on Motion for Temporary Restraining Order before the HONORABLE GERHARD A. GESELL, United States District Judge, at 3:40 p.m.

APPEARANCES:

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Counsel for Defendants

PARTIAL TRANSCRIPT

[2] PROCEEDINGS

THE DEPUTY CLERK: Civil Action No. 1412-72, Murry, et al., v. The United States Department of Agriculture. Mr. Ronald F. Pollack, Mr. Roger A. Schwartz, Mr. John R. Kramer for the Plaintiffs. Mr. Peter J.P. Brickfield, Mr. John Harris, Mr. Robert Lowerre for the Defendants.

THE COURT: We are in open Court because the United States does not wish to follow the usual practice of considering a temporary restraining order in chambers.

You may proceed for the Plaintiffs.

* * * * *

MR. BRICKFIELD: May it please the Court, I am Peter Brickfield, representing the Defendants in this case.

The four criteria for the granting of interlocutory relief are well know to the Court. We contend no one of these four is met by the instant case. Initially, the maintenance of the status quo would be done violence by the granting of a temporary restraining order.

As the affidavit of Mr. Hekman shows, all states except Vermont are currently implementing the situation whereby those who are claimed as dependents and are over

eighteen years of age are not, and the household in which they reside is not eligible for food stamps. The courts go farther and require more proof before restraining a governmental program such as the Food Stamp Act.

[3] THE COURT: Well, that isn't what is before me. There isn't anything here involving a request to enjoin the operation of the Food Stamp Act.

MR. BRICKFIELD: The Plaintiffs are requesting Your Honor to fashion relief that would allow them to receive food stamps.

THE COURT: That is right, but not to enjoin the enforcement of the Food Stamp Act. That is the same argument you made in Moreno. The fact of the matter is that all that is involved is whether or not this amendment should be enjoined, not the statute.

Isn't that right? The Food Stamp Program is going to go on.

MR. BRICKFIELD: We contend the Court in Moreno was in error there. Although a protective notice of appeal has been filed, as far as I am informed, the Soliticor General has not formally determined the question of appeal in that issue. Even if the issue is just the question of the enjoining of this amendment, the amendment is in existence now; and to enjoin it would certainly do great violence to the status quo.

In Stratton and St. Louis Southwest Railroad Company, the Supreme Court held it to be an abuse of discretion when a District Court issued temporary relief which did not maintain the status quo but, in fact, changed it; and this, we contend, is the case in the instant matter.

[4] In addition to the problem with the status quo, on the question of irreparable injury, the most recent of all Plaintiffs to be denied food stamps was on May 26, 1972.

For three of the Plaintiffs, no dates were given. One was recently; one as far back as November of '71. To ask this Court to act on such a serious matter on such short notice, without the benefit of a three-judge court—which Congress has stated should be the body to act in questions of constitutionality of a statute—we think would be in error.

THE COURT: That is a new theory to me. The cases are legion where an individual judge protects the jurisdiction of the three-judge court by determining matters on temporary restraining orders. I don't understand what you are talking about.

MR. BRICKFIELD: To my mind, the jurisdiction of the three-judge court would still be here, were this Court not to grant a temporary restraining order. The three-judge court would be convened by the Chief Judge and they would sit upon this exact issue.

THE COURT: When would you be ready?

MR. BRICKFIELD: We would be ready within ten days, Your Honor.

THE COURT: It is purely a legal matter, isn't it?

MR. BRICKFIELD: I believe so, Your Honor. Several of the questions that the Court asked—

[5] THE COURT: I am trying to find out who the other judges are, to find our the question of the availability of the Court. I am leaving on vacation August 1. If this Court that is appointed is an available Court, in the sense that the other two Judges are here in the summer period, then it might very well be possible to go directly to the preliminary injunction stage perhaps on the last day of this month, which I think is a Monday.

MR. BRICKFIELD: I believe so, Your Honor.

THE COURT: That was one of the matters I wanted to inquire of you about, as to whether you felt, as I am

inclined to feel, that this is primarily a legal issue and not a factual issue and, therefore, something that could be presented on briefs and legal argument?

MR. BRICKFIELD: We feel that it is primarily a legal issue. We are endeavoring to attempt to elicit certain facts on these various Plaintffs and on the state plans. Because of the quickness with which this hearing came on, we don't know how many people are affected; we don't know what the states actually do in all instances. We are trying to find this out.

There are a number of questions that the Court asked Plaintiffs that we don't have the answers to right now. We are working on it right now.

So I would think even for this particular question, we should wait until the facts can fully come out. I think [6] there will be no issue of fact in this case but what the facts are have not totally been developed; but they will be developed clearly and very quickly, I feel.

On the question of success on the merits, we feel, initially, that the question is not one of a presumption of a party not being needy. It is a question of defining those people who are needy.

THE COURT: If there are ten people in the household and the father that is long gone gives the oldest son $10, and there is no other income in the family, all the other nine people get excluded from stamps?

MR. BRICKFIELD: That is so. This was considered–

THE COURT: I don't quite understand your point.

MR. BRICKFIELD: Well, the question is not the presumption of the need of the household; the question is whether or not this household meets the eligibility requirements as set forth by Congress. Congress has not presumed–

THE COURT: Don't I have to look at the purpose of the statute?

MR. BRICKFIELD: Yes, sir.

THE COURT: Well, the purpose of the statute is to take care of needy people; and the purpose of the statute is to further the distribution of agricultural products.

MR. BRICKFIELD: True. Congress found that–

THE COURT: In the case I gave you, for example, you [7] would have a family substantially with little or no income, which would clearly be needy, and they are simply excluded. Isn't that right? Isn't that the way it works?

MR. BRICKFIELD: They would be needy to the extent that they would need food, and so forth.

THE COURT: Yes.

MR. BRICKFIELD: But the question of their being needy is one which in certain areas Congress has chosen to facilitate through the Food Stamp Act.

THE COURT: If they said, if the children are red-headed, they won't get anything; would that be a proper classification?

MR. BRICKFIELD: I don't think that would, Your Honor.

THE COURT: Then why is this a proper classification?

MR. BRICKFIELD: I think a proper classification is whether or not they are needy.

THE COURT: On my supposition, the nine people are in need.

MR. BRICKFIELD: The question, secondarily, is–

THE COURT: That is why I don't understand what you are saying to me.

MR. BRICKFIELD: Well, the Congress has set forth limits, so many dollars with so many people in the family, is needy. I think we would have great difficulty to say that absolutely one dollar more would not be needy.

And yet Congress [8] has set a dollar limit. There is a dollar limit set on the Food Stamp Program. To say one dollar more or less takes a person out of the category of being needy, I think would be a very difficult question. The question of who is and who is not needy, I think, is a political question for Congress to decide.

Plaintiff Murry receives her aid from her husband through a court-order for support.

Congress has found in the debates—I haven't had a chance to fully research the legislative history—it incongruous to have a person benefiting from food stamps and at the same time a person in another household, who is not eligible for food stamps and, therefore, perhaps not needy, receiving a tax benefit of some $700 as an exemption. If, indeed, in the Murry family, Mr. Murry is not needy, he has money, Plaintiff would have the Federal Government take care of her rather than seek through the state court an increase in the amount that she is receiving from her ex-husband, through the child support and rent that she is receiving. The question perhaps is where these resources should come from.

THE COURT: Surely there are many cases where they are not going to come from anywhere.

MR. BRICKFIELD: This is true, Your Honor.

THE COURT: That is the problem of the arbitrariness of the classification, perhaps.

Now, what about your other points? You say on the [9] merits you will prevail, and the status quo will be changed. What else?

MR. BRICKFIELD: We also feel the irreparable injury issue is open to serious question, the Plaintiff having been—the most recent one—off food stamps for just short of two months, and others, we don't know the date. One of them, since November 1.

The last one is the question of the public interest; and this, in large part, in our minds, turns on whether the Court feels the relief granted in Moreno is proper. We feel that that was not the proper relief. The only relief that can be granted would be to eviscerate the Food Stamp Act; and we don't think that would serve the public interest. We do not think, when Congress has a group of people that they allow relief for, and they purposely and deliberately change that group to a different one, that a court can say that Congress should keep the group they previously had.

THE COURT: We do it all the time. I must have done it ten times in this Court. I mean, Congress passes an act that says that somebody who has been in the District of Columbia only six months will not be allowed to go to St. Elizabeths to get care. A three-judge court has thrown that out. There are a whole series of things. We haven't said, nobody gets care.

MR. BRICKFIELD: No, Your Honor, but you haven't said somebody who has been in here for one day gets care. What they [10] said is nobody can come into St. Elizabeths until they have been here for six months. You have struck down the requirement that you must be here for six months in order to get care. What you have left is it is without requirements to come in.

THE COURT: In this instance, the statute says that nobody is needy if someone has claimed someone as a dependent.

MR. BRICKFIELD: No, Your Honor, it doesn't. It says they may or may not be needy. We are not directing ourselves towards them. There are a lot of people in the country, I think, who may or may not be needy, to whom food stamp relief is not available. The example I used a moment ago, I think, is clear. Who is to say $400 is enough, as opposed to $399 a month? That one dollar

does not make the difference between being needy or not. Congress has to make limits. This, we feel, is a limit Congress has set through the political process. Congress fully considered the issue before the Court. They considered the fact that there would be certain people–

THE COURT: Now, that is interesting to me. I couldn't find it in the debates. Where is it? I never saw something that was slopped through with greater speed than this. Where is the consideration? I couldn't find in the debates any indication of how many people were affected, of how it was going to operate, of what its effect would be on the distribution of agricultural products, what it would be upon the number of people that were excluded. Those things aren't in the debates.

[11] MR. BRICKFIELD: Those things are not, no.

THE COURT: What do you mean by thorough consideration?

MR. BRICKFIELD: It appears the initial intent of Congress was to take those who were college students and their parents could afford to pay for them and not make them eligible for food stamps.

THE COURT: The Act didn't do that. It took a much broader swipe than that. It didn't just focus on that issue. I realize that is what activated them.

MR. BRICKFIELD: Yes.

THE COURT: But it includes a lot more than that, doesn't it?

MR. BRICKFIELD: Congress is aware of all those that it included at the time. This the debates do show.

THE COURT: Well then, what was the number?

MR. BRICKFIELD: They did not state a number, Your Honor, but they were aware that there would be people not in the college student category, when they passed the provision.

THE COURT: Yes, I think that is right.

So you say that the effect would be to destroy the entire Act, which would be against the public interest, clearly; that these people are not irreparably injured.

MR. BRICKFIELD: Any more than they would be in ten days, when a full Court can give a full consideration to the issues.

[12] THE COURT: Yes. And I would be changing the status quo; and that the merits are in your favor?

MR. BRICKFIELD: Yes, sir.

THE COURT: I think, in part, my views about this—which I want to mature in the light of this argument—would depend to some extent on the availability of the Court. It may be that I ought to attempt to get a Court that is available.

Perhaps now we will have some word about the Judges. Do we know the other Judge, yet, Miss Brown?

This is an indication of the problem. Here is one Judge who has been named, apparently, tentatively, who is going to be gone the month of September. I know he is here now, a hard-working Judge, and he would be available now. You see, I am going to be gone in August. He is going to be gone in September. You see what the process would be, because the three vacation months in this Court are July, August and September. Some of us go away each month. This Judge, at least, would be available this month. I think, perhaps, I really ought to make an effort, having gone this far, if the Judge doesn't turn up automatically as one that would be available this month, to see if the Chief Judge would consider naming someone who would be. That would mean that we could bring this matter on for a prompt hearing, in which you would file some affidavits, I take it.

MR. BRICKFIELD: Yes, sir.

THE COURT: And respond to the brief that the other [13] side has failed. My great preference would be to do it that way, if we can do it within those narrow time limits. I think that would be better all around. I am sure the Plaintiff would agree to that.

MR. SCHWARTZ: That is right.

THE COURT: If it can be promptly resolved, there is no point in interfering with the temporary restraining order and then perhaps having to reinstate, or something. I think the confusion would be very great.

MR. BRICKFIELD: Yes, sir.

THE COURT: My concern was that possibly we would be going over into November or into late October and then it seemed to me we had real problems that the Court would have to consider as to whether any interim relief was necessary.

MR. SCHWARTZ: Your Honor, excuse me. We still feel there will be irreparable harm even if you are able to convene this Court within a matter of weeks.

THE COURT: I understand that.

MR. SCHWARTZ: Might I address the Court, Your Honor?

THE COURT: You would have no difficulty with a hearing this month, if it could be arranged?

MR. SCHWARTZ: We are anxious to have a hearing as soon as possible.

THE COURT: And you have no further facts that you want to present?

[14] MR. SCHWARTZ: No, Your Honor. I have some comments on opposing counsel's comments.

THE COURT: I meant looking toward the preliminary injunction. You agree the preliminary injunction would be a legal issue?

MR. SCHWARTZ: Yes.

THE COURT: To be argued by counsel on both sides and briefed.

MR. SCHWARTZ: Yes, sir.

THE COURT: I will hear anything you have to say in response.

* * * * *

(Whereupon, at 4:25 p.m., the hearing was concluded.)

CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on July 19, 1972, and the foregoing pages 1 to 14, inclusive, constitute the official partial transcript.

/s/ Ida Z. Watson
IDA Z. WATSON

[15] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LULA MAE MURRY, et al.,
Plaintiffs,

v.

Civil Action
No. 1412-72

THE UNITED STATES DEPARTMENT
OF AGRICULTURE, et al.,
Defendants

Washington, D.C.
July 31, 1972

The above-entitled cause came on for Hearing on Motion for Preliminary Injunction and Defendants' Motion to Dismiss before the HONORABLE J. ROGER ROBB, United States Circuit Judge, the HONORABLE GEORGE L. HART, JR., United States District Judge, and the HONORABLE GERHARD A. GESELL, United States District Judge, at 2:00 p.m.

APPEARANCES:

RONALD F. POLLACK, Esq.,
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MICHAEL B. TRISTER, Esq.,
Washington, D.C.

Counsel for Plaintiffs

PETER J.P. BRICKFIELD, Esq.,
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JOHN HARRIS, Esq.,
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Department of Agriculture

Counsel for Defendants

PARTIAL TRANSCRIPT

[16] PROCEEDINGS

JUDGE ROBB: Will you call the case, Madam Clerk.

THE DEPUTY CLERK: Civil Action 1412-72, Lula Mae Murry, et al., v. United States Department of Agriculture, et al. Mr. Pollack, Mr. Schwartz, Mr. Trister for the Plaintiffs. Mr. Brickfield, Mr. Harris and Mr. Lowerre for the Defendants.

JUDGE ROBB: Gentlemen, the Court will allow you half an hour a side, but you need not, unless you wish, take it all.

* * * * *

JUDGE ROBB: Mr. Brickfield.

MR. BRICKFIELD: Yes, sir. May it please the Court, the Government would feel and would like the Court case to be decided on the merits at this hearing.

We would like, initially, to refresh the Court with the strong presumption of constitutionality of actions of Congress. There is a very strong burden on the part of Plaintiffs to establish no constitutionality of a statute of Congress.

JUDGE GESELL: Does that apply to amendments?

MR. BRICKFIELD: Yes, sir, an amendment to a statute is an act of Congress. The cases refer to acts of

Congress as having a strong presumption of regularity; and I would think the amendment would be an act.

JUDGE GESELL: An amendment un-debated on the floor?

MR. BRICKFIELD: The amendment was debated on the floor.

[17] JUDGE GESELL: Very little, very little on the floor. Nothing in the reports. It is skipped over in the reports. Where does that presumption come from in this case?

MR. BRICKFIELD: The presumption comes from the fact when Congress does act, as it has in this particular case, that their acts are done rightly and properly, that they are public officials; it comes from the old common law presumption of regularity in the acts of a public official, that he is deemed to be acting properly. Members of Congress were deemed to be acting constitutionally when they passed this particular amendment to the Food Stamp Act of '64.

We would refer, initially, to the fact that the characterization of needy families is not the purpose of the Food Stamp Act. The preamble refers to low income families and not needy families and therein, I think, lies the biggest problem with an understanding of this case.

Congress first declares its intention to supplement low income families with certain food assistance. It then goes on in the original Act, not the amended Act but in the original Act to state that there shall be relief given to eligible households—always to eligible households, not needy families. Households are carefully defined in the original Act, in the new Act, where it was changed; and the Court did in Moreno construe part of that amendment to be unconstitutional. This decision, we feel, was wrong; and we suggest to the Court that it not be [18] followed.

The definition of "household" always referred to certain cooking facilities that people have, to their eating in common, to their common preparation of their food. These are restrictions. This is what eligibility meant to Congress; and we feel Congress has a right to say: We have eligible households and non-eligible households.

JUDGE ROBB: Does Congress have complete discretion in defining eligibility?

MR. BRICKFIELD: Not complete discretion. They must define eligibility within the constitutional requirements.

JUDGE ROBB: Congress couldn't say: No family containing a left-handed child could receive food stamps, could it?

MR. BRICKFIELD: No, sir.

JUDGE ROBB: Why not?

MR. BRICKFIELD: I think that that would be a violation of equal protection.

JUDGE ROBB: Irrational?

MR. BRICKFIELD: Yes, sir.

JUDGE ROBB: Contrary to the purpose of the statute?

MR. BRICKFIELD: Not necessarily contrary to the purpose of the statute but irrational.

JUDGE ROBB: Irrational.

MR. BRICKFIELD: And arbitrary.

JUDGE ROBB: The Plaintiffs say that what Congress [19] has done here is irrational, right?

MR. BRICKFIELD: Yes, sir.

JUDGE ROBB: You tell us why it isn't?

MR. BRICKFIELD: Yes, sir. We are dealing here with the area of welfare and economics. Congress has just so many dollars to appropriate to just so many people. As one of the Congressmen, in considering this stated: If we don't get rid of some of the abuses in the Food Stamp

Program, the taxpayers are going to rise up and demand an elimination of the Food Stamp Program. That, Congress did not want. Congress saw what they considered an abuse. A parent and a child—and I emphasize that it is not an unrelated person, but a parent and a child—a parent getting a break, shall we call it, getting the right to claim the child for tax purposes, and the child receiving food stamps. This duality of benefits, according to the ideas of Congress, was not proper. They deemed this to be an abuse.

JUDGE GESELL: Even a year after no dependency was claimed?

MR. BRICKFIELD: It is my understanding of Federal financing that it is actually this year's taxes that pay in significant part for some of next year's programs. We all, most people, anyway, file their income tax in April or some time in the beginning of the year for the previous tax year. Since there is no tax declaration at the time, within a tax year, but the declaration of dependency occurs the year after, Congress [20] has determined that when they are doling out, giving out these benefits, they are going to take the most recent information available. There is no more current information than our last tax returns. When January 1 comes of this year, we would then have a situation where if a child was not being claimed for '72 tax year, then, in January of '72 he would change his status. He was claimed for the '71 year. This would change then.

I would think that this would be the only way that Congress could effectively do this without a major change perhaps in the declaration provisions of the Internal Revenue Code.

JUDGE HART: Counsel, don't we really get down to this in this case: That Congress recognized a small evil. In an effort to excise that evil, instead of using a scalpel, it used a meat cleaver, and it just cut much too broad and deep throughout the needy people. Really, something it didn't intend to do. Certainly Congress never intended to cut out people like these Plaintiffs in this case.

MR. BRICKFIELD: When Congress acted, they acted on the set of facts before them. The Chicago Mercantile case we cite shows that these facts are the ones to be considered by the Congress. Admittedly, the Congressional Record legislative history is not as clear as we would like to have it. But the fact is that Congress did act; they did attempt to remove this [21] cancer within the operation of the Food Stamp Program. I think that the two considerations, the two decisions this Court would have to come to, in order to say that Congress was wrong, are, one, it was not an abuse; and I think that is a consideration you cannot come to—

JUDGE ROBB: What was not an abuse?

MR. BRICKFIELD: The college students receiving food stamps while their parents were still receiving tax deductions, the so-called voluntary poor, where students would associate themselves in a household and have their parents give them just so many dollars.

JUDGE HART: We don't have college students in these Plaintiffs in that category. This thing has cut these people who aren't related to college students or college students being supported. Furthermore, surely Congress if it was talking about taking people as a tax deduction must have meant legally taking them; and that doesn't seem to be provided for in any way here.

JUDGE GESELL: And the classification of college students can't be justified over the classification of other students of the same age. Suppose you are eighteen years

old and going to high school. Suppose you are not going to high school or college, and you have a wealthy parent. What is the basis for picking on college students? Haven't they, really, as Judge Hart suggests, thrown the baby out with the bath?

MR. BRICKFIELD: I do not think so, sir, no.

[22] JUDGE GESELL: That is what we need help from you on.

MR. BRICKFIELD: If I may attempt to answer them seriatim.

The college student, I believe, was not used by Congress for that reason. It would not be fair and equitable to distinguish between the college student and non-college student. All children over the age of eighteen were treated the same. All children over the age of eighteen, not living with their parents, and claimed as dependents by their parents, were affected the same way.

JUDGE ROBB: Yes, but you say this statute was intended to furnish food to low income families, correct?

MR. BRICKFIELD: Yes, correct.

JUDGE ROBB: Yet, you say, although you have a family, we will say, with eight or ten people in it, if one of those people happened to be taken as a tax deduction, the family is, ipso facto, not a low income family, right?

MR. BRICKFIELD: No, sir. They are not an eligible family. They may still be a low income family. I think it is more than semantics. It would be the same if you were to take a family of nine or ten people and have one person having a very good, high income, and you were to say, this household—now, we have a situation where the non-related situation is not applicable—if you were to take a group of ten people living together, that constitutes a household, that has one person [23] with an income of, say, $20,000 a year, that family might be ineligible; but let that one person leave—

JUDGE ROBB: Congress didn't say that. It said, just being taken as a tax deduction.

MR. BRICKFIELD: Yes, sir.

JUDGE GESELL: If the father, who is absent, gave the child $50 for Christmas, he would be a dependent, wouldn't he? In other words, it bears no relation to the economic circumstances of the family.

MR. BRICKFIELD: No, sir, I think not. In order to declare a deduction, you have to contribute over half of the child's support.

JUDGE GESELL: That is all he got, $50. That child got $50, period, all year, so he got $50.

MR. BRICKFIELD: Congress has deemed when the parent gets this benefit of the tax break, that the household of the over eighteen-year-old child is not eligible. Now, admittedly–

JUDGE ROBB: Where is that reasonable?

MR. BRICKFIELD: Because they attempted to get rid of a larger situation. Judge Gesell mentions a person getting $50. We have various extremes of this. Admittedly, we have a number of Plaintiffs here whose needs appear to be great. We have situations where every act of Congress perhaps affects those whom it didn't intend. I think if we have only eight Plaintiffs involved in this situation, it is very different from a broad-based [24] situation. I think Congress saw what they felt–

JUDGE ROBB: What do you say about this being a class action? I understand no order has been entered. What do you say on that point?

MR. BRICKFIELD: We do not take a position one way or another on that at this time.

JUDGE ROBB: You do not?

MR. BRICKFIELD: No, sir. We feel that Congress has the right to choose among various alternatives in exor-

cising these abuses. They could have eliminated the Food Stamp Program. They chose not to do this. I think they could have counted in the income of the person taking the child as a tax dependent for the purposes of that household. They chose not to do that. They just attempted to get rid of the duality of benefits.

The classification or the characterization of college students, I think, is just one example of the abuses Congress was aiming at. I don't think they are exclusively attempting to get at college students but they were attempting to get at the duality of benefits that people were receiving. Someone has to pay the bill. The taxpayers didn't like the situation; and in order to, perhaps, alleviate any situation where the taxpayers would have a hue and cry to eliminate the Food Stamp Program, Congress has determined to set up these eligibility criteria. I think like the criteria of cooking in common, preparing your own food, so, too, these criteria can be imposed. [25] It is very similar, I think when considering the low income aspect to the maximum income that can be allowed when a person is eligible. I don't think we can say that a family who receives one dollar more per month than the requirement, the maximum allowable income, is significantly less needy than the family who receives exactly to the dollar the maximum allowable income and is still eligible for food stamps. Yet, somewhere, somehow there must be restrictions; there must be eligibility requirements.

Congress has said that with certain formulas the Secretary is to determine these low income standards; and the Secretary has. So, too, Congress has said that certain people in fact are eligible.

I would say this is very similar to the Dandridge case, where the Court considered a maximum of $250 per family as an AFDC situation.

JUDGE GESELL: In administering the statute, you don't even look at the tax returns, do you?

MR. BRICKFIELD: No, sir.

JUDGE GESELL: So all the talk about the tax returns is a little off the mark, isn't it? You don't examine them to determine whether or not the dependency claim is validly made, whether the dependency claim is actually made, or anything else. You ask some of these poor people who come in and say, I think so; so they get no food stamps. They say, I think he did last [26] year, or, I don't know. There isn't any administration through the Internal Revenue Bureau of this system that makes it fair throughout the country. If the woman, when she goes in, says, No, he didn't, then she gets the food stamps.

MR. BRICKFIELD: Yes, sir.

JUDGE GESELL: So there isn't any use of the tax information to implement the program, in fact, is there?

MR. BRICKFIELD: No, sir. The use of the tax information it is believed by the Internal Revenue Service, for this purpose, would be illegal and contrary to their statutes, which provide a non-disclosure of tax returns.

JUDGE GESELL: Doesn't that suggest the further arbitrariness, then, in the standard that the Congress used?

MR. BRICKFIELD: I think not, sir. The question is, claimed, as opposed to any other situation, when a person is claimed; and you are entitled to a hearing on the fact of whether they are or are not claimed. That hearing you get. You are entitled to a hearing on whether the parent taxpayer is or is not of an income that would make him eligible for food stamps. These hearings you get. But once that parent claims the child for income tax purposes, he receives that benefit and, therefore, the duality of benefit.

JUDGE GESELL: He is no where around.

MR. BRICKFIELD: He is given some money.

JUDGE GESELL: He is gone; he is long gone; he is not [27] before that hearing. Nobody knows where he is or who he is or who is shacked up with or what he is doing. Isn't that right? The person that is in the hearing is the lady that is home with a bunch of young kids, as I understand this case.

MR. BRICKFIELD: Yes, sir.

JUDGE GESELL: Not the man who claimed the dependency. He is gone. Is that right?

MR. BRICKFIELD: That is under the situation—

JUDGE GESELL: What do you mean about this hearing? He is not there.

MR. BRICKFIELD: Under the situation, as we have it by these few Plaintiffs, the man is not there. This woman comes in. If she says she was not claimed, her word is taken. If she says she was claimed and she says she knows, then that word is taken.

JUDGE GESELL: Then the statute operates.

MR. BRICKFIELD: Then the statute operates. The big problem comes, of course, where the woman says, I do not know. At this juncture, an effort is made to find out what the facts are. They write a letter to the departed parent to find out the situation.

The hearing that she is allowed, though, goes to the two factual issues that are before the food stamp office, the local state-operated food stamp officer. I would think that she, therefore, does receive the hearing, as necessitated or as ordered under the laws concerning due process.

[28] The situation where she is claimed and the claim was invalid, I think is one of the problems where we have Congress using its discretion to decide which way they

are going to attack the problem. They could have stated that no one who has a child who is receiving food stamps can take that child—receiving food stamps out of their household can take that child as a tax deduction. That, I think, they could do, just as they could say that no child whose parent is claiming them can receive food stamps. They don't want this duality. You just cannot have your cake and eat it. Congress chose one of several different ways to take care of this.

JUDGE HART: You mean the parent can't have the cake and the child eat?

MR. BRICKFIELD: I think my aphorism was perhaps poorly chosen under the circumstances here. We think you cannot have the duality of benefits; and we think that stopping that duality is a valid purpose for the Congress to go about, a valid congressional intent. If Congress intended it to be so, we think they have chosen a legitimate and a rational way to go about it. These, we feel, are the criteria to be used in this case. They have defined "households." They have defined them carefully. They saw abuses, and the abuses they attempted to eliminate.

We feel that any situation concerning the associational rights would be clearly analogous to a situation where one member of a family, which we often have, is the one having enough [29] income, and if that one member of the "household" has the income, then the entire household could become eligible if that person were to leave. This, I do not think is wrong, to set a maximum income to define who receives food stamps.

JUDGE ROBB: But that is not what Congress did, is it?

MR. BRICKFIELD: No, sir. Congress said: We don't want duality and, therefore, if somebody is claiming you

as a tax deduction, under certain circumstances, you cannot get food stamps. I think Congress has a right to stop the duality; and I think they chose a very clear, concise and rational way to do it.

JUDGE GESELL: But who is the "you"? The "you" isn't the taxpayer.

JUDGE ROBB: And the "you" isn't the person taken as a tax deduction.

JUDGE GESELL: It is neither of those people.

MR. BRICKFIELD: Were Congress to take the taxpayer and not allow the taxpayer to take the deduction, we would not be here. We would be in Tax Court with a taxpayer who is claiming the right to take the deduction, saying: I didn't get the food stamps. The over-eighteen-year-old child got the food stamps and I have a right to take my tax deduction. We would have that case. It is a question of balancing. Congress decided, in its discretion, which way to go. It does not seem to be argued that Congress does not have the right to attempt to avoid abuses, to [30] attempt to avoid duality of benefits. It is a question of, did they choose the right method. It is not the posture of courts to seek to second-guess a discretional decision of the Congress.

JUDGE ROBB: So long as it is reasonable.

MR. BRICKFIELD: So long as it is reasonable.

JUDGE ROBB: Do you agree to that?

MR. BRICKFIELD: Yes, sir.

JUDGE ROBB: So isn't the question here whether what Congress did is a reasonable method or not? Isn't that right?

MR. BRICKFIELD: Yes, sir, I would say that is very clearly put.

If the Court has no more questions—

JUDGE HART: Counsel, have you ever been in the Service?

MR. BRICKFIELD: No, sir.

JUDGE HART: Well, you wouldn't understand this, but you have told us what Congress aimed at. Whoever was marking the target was surely waving Maggie's drawers—meaning, a complete miss.

* * * * *

(Whereupon, at 2:45 p.m., the hearing was concluded.)

[31] CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on July 31, 1972, and the foregoing pages 15 to 30, inclusive, constitute the official partial transcript.

/s/, _____
IDA Z. WATSON

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-848

UNITED STATES DEPARTMENT OF AGRICULTURE ET AL., APPELLANTS

v.

LULA MAE MURRY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE APPELLANTS

1. As appellees recognize (Br. 22–28), this case presents a threshold question whether adjudication of their constitutional claims is appropriate at this time. We suggested in our brief (at notes 3 and 6) and further show below that each named appellee arguably was denied food stamps solely due to errors in the administrative interpretation of the "tax dependent" amendment to 7 U.S.C. 2014(b). Thus there are issues of statutory interpretation which should be resolved before this Court reaches the constitutional questions raised here.

a. Much of appellees' attack on the constitutionality of the "tax dependent" amendment is based upon the

allegation that the statute operates to deny food stamps on the basis of invalid dependency claims (Br. 35–39). But the statute has not been authoritatively construed as having that effect. As we indicated in our brief (at p. 12), we believe that the statute would be constitutional as so construed. However, such a construction might raise constitutional uncertainties which would not otherwise be present, and "'[w]hen the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.'" *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 348 (concurring opinion of Mr. Justice Brandeis). See, also, *Cohens* v. *Virginia*, 6 Wheat. 264, 441.

In this case, it is "fairly possible" to construe the tax dependent amendment as applying only with respect to valid claims of tax dependency. Such a construction, appellees apparently concede, would result in the certification of appellees Lee, Beavert and Nevarez as eligible to receive food stamps. Furthermore, appellees' own factual allegations indicate that appellees Murry and Alderete were also denied food stamps on the basis of invalid dependency claims.[1]

[1] In order to claim a dependent, a taxpayer must provide over one-half the dependent's total "support." 26 U.S.C. 152(a). Appellee Murry's household received monthly support of $57.50 from the taxpayer claiming the dependency exemption and $117 per month in public assistance (Br. 10). Similarly, appellee Alderete's household received $105 per month from the taxpayer making

Thus they too would be entitled to food stamps if the statute were construed as denying eligibility only where the claim of dependency is itself valid.

b. In our brief, we stated (at note 3) that we read the statute as being "concerned only with dependency claims made with respect to a taxable year during which the dependent in fact resided in the household seeking food stamp assistance." Appellees contest this interpretation and argue that a dependency claim for the year prior to which the dependent became a member of the applicant-household also results in denial of food stamps, even though they concede that our reading, but not theirs, would result in certification of appellee Broderson as eligible for food stamps (Br. 27). We believe our interpretation to be correct as a matter of both statutory language and legislative intent.[2]

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the dependency claim, but Mrs. Alderete received an additional $198 per month in public assistance (Br. 12–13). Amounts received in the form of public welfare are included in determining whether a taxpayer has furnished the necessary minimum support. See, *e.g.*, Rev. Rul. 71–468, 1971–2 Cum. Bull. 115. (This result is not affected by 7 U.S.C. 2016(c), which provides that food stamp assistance shall neither be taxable as "income" nor constitute "resources" for purposes of determining the recipients' entitlement to other public assistance.) Thus it would appear that, contrary to appellees' claims (Br. 25–26), the taxpayer dependency claims with respect to these households were invalid.

[2] As appellees point out (Br. 27), prior to the issuance of an injunction in this case the Department of Agriculture had not spoken on this particular question of statutory interpretation. But we are now informed by the Department that if it prevails in this case, it will interpret and apply the tax dependent amendment in accordance with our reading of the statute, *i.e.*, as denying eligibility only when the claim of tax dependency is made with respect to a year during which the dependent lives in the applicant-household.

The statute, speaking in the present tense, provides: "[a]ny household which *includes a member* who has reached his eighteenth birthday and who *is claimed* as a dependent child * * * shall be ineligible * * * during the tax period such dependency is claimed and for a period of one year [thereafter] * * *" (emphasis supplied).[3] Thus the statute operates only with respect to an applicant-household of which the dependent was a member at the time he was claimed as a dependent. Furthermore, this reading accords with the general congressional interest in the sources of support which may reasonably be deemed available to the applicant-household (see our brief at pp. 9–11).

Under this reading of the tax dependent amendment, the denial of food stamps to appellee Schultz was erroneous;[4] the record with respect to appellee Valdez is insufficient to permit a determination whether the denial of food stamps to him was based

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[3] The statutory language "is claimed" does pose certain interpretative difficulties. The dependency claim normally is made by filing a withholding tax statement or may be made by answering a Department of Agriculture questionnaire prepared for purposes of the food stamp program. Thus, notwithstanding appellees' assertion to the contrary (Br. 5, 42), the tax dependent amendment does operate during the year for which the dependency claim is made. Appellees' argument apparently is based on the fact that the dependency claim may also be made in a tax return filed during the following year.

[4] Contrary to appellees' contention (Br. 26), appellee Schultz did not live in her present household while claimed as a tax dependent; she and her husband were denied food stamps after their marriage in 1972, but she was claimed as a tax dependent by her parents only for 1971 (App. 58).

on an incorrect interpretation of the Act.[8] At a minimum, therefore, it is arguable that each appellee here was denied food stamps solely on account of errors made in administering the Act.

c. For the foregoing reasons, it appears that the appellees, in addition to their constitutional claims, implicitly present non-constitutional statutory claims as well. As a matter of orderly constitutional adjudication, the questions of statutory interpretation should be resolved prior to consideration of appellees' constitutional claims. See, *eg., Light* v. *United States,* 220 U.S. 523, 538; *Siler* v. *Louisville & Nashville R. Co.,* 213 U.S. 175, 191. Moreover, if the statutory issues here are determined in appellees' favor, there will be no occasion to reach the constitutional question.[9]

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[8] Appellees now contend (Br. 26) that appellee Valdez was living in his present household during the year for which his parents claimed him as a tax dependent. But his affidavit, which is silent on the question of when he moved out of his parents' household (App. 50–52), does not support that contention.

[9] On the basis of the representations made in appellees' affidavits (App. 29–36, 48–62), with the exception of appellee Valdez each appellee would be entitled to food stamps if the statutory issues are decided in their favor. Further factual findings would be necessary before Valdez' eligibility could be determined. If Valdez is also determined to be eligible to receive food stamps, the alleged class on whose behalf this action was instituted would be deprived of any "representative parties" (Rule 23(a)(3), Fed. R. Civ. P.) and the action therefore should be dismissed.

Although the statutory questions involved here did not receive full consideration in the district court, this Court may of course determine them in the first instance. Cf. *Kent* v. *Dulles,* 357 U.S. 116. However, it may be more appropriate for this Court, in the exercise of its discretion, to vacate the judgment below and remand to the district court for initial consideration of the statutory issues.[7] That court would then have the advantage of briefing and argument on these issues, and its decision with respect to them might dispose of any need for further review. See note 6, *supra.* Moreover, if after resolving the statutory issues the district court determined that a constitutional question still remained, it might reconsider and reverse its prior holding of unconstitutionality.[8] If review were again sought, this Court would then have before it—as it now does not—the district court's reasoned elaboration of all the issues, statutory as well as constitutional, presented by this case.

2. In any event, the tax dependent amendment satisfies the applicable requirements of equal protection. Appellees apparently now acknowledge that this case is appropriate for the application of traditional equal protection analysis. See, also, *Ortwein* v. *Schwab,* No. 72–5431, decided March 5, 1973 (slip op., p. 5). However, they fundamentally misstate the statutory classi-

[7] The district court granted appellees' motion for summary judgment on constitutional grounds notwithstanding the government's representation (App. 77) that it had not had sufficient time to determine whether appellees had been properly denied food stamps under the statute and regulations.

[8] The decision below rested heavily on the assumption that the statute denied eligibility on the basis of invalid dependency claims. See J. S. App. A, 10.

fication which must be subjected to that analysis. Appellees contend (Br. 29) that the tax dependent amendment creates two classes of persons: needy persons eligible for food stamps because their households contain no disqualifying dependents, and needy persons ineligible for food stamps because their households do contain such tax dependents. This simple dichotomy conveniently but misleadingly assumes a general set of facts which appellees have been unable to prove.

The constitutional problem this case actually poses is whether the statutory classification is rationally related to either an assessment of actual need or the elimination of program abuse. We believe that there is such a rational relationship. The statute operates to deny food stamps to households in two sets of circumstances: first, when it is shown that a parent in a presumptively more affluent household is supplying substantial financial assistance to one or more members of the applicant household; and second, when it is known that such a parent provided one or more members of the applicant household with substantial financial assistance in the preceding year. In the first instance, there is a direct and obvious relationship between the statutory classification and the assessment of need: the household has a proven source of outside support which may well be subject to augmentation if the household in fact experiences some need.* In the

*Appellees complain (Br. 39–42) that in some cases the level of outside support may be inadequate. But they rely solely on examples involving invalid dependency claims. Hypothetical cases may be envisioned in which parents validly claiming dependency exemptions in fact supply inadequate support to raise their chil-

second instance the statutory classification is related both to the assessment of need and to the reasonable protection of the fisc against abuse of the program. Congress both reasonably presumed the continuation of parental support in the normal course of events and acted to discourage relatively affluent parents from shifting the burden of supporting their children onto the federal government.[10]

In enacting the tax dependent amendment, Congress was attempting to eliminate a major loophole in the food stamp program which had been exploited by "college students, children of wealthy parents" (116 Cong. Rec. 41979). This was done in the face of expressions of concern that if such abuses of the pro-

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dren out of poverty, but appellees in this litigation have failed to establish the existence of such a case. Even assuming such cases exist, however, the statute would not for that reason be unconstitutional. In applying the Equal Protection Clause, "a permissive approach which does not require every classification to be drawn with mathematical nicety seems a practical necessity if the process of legislation is not to be hopelessly stymied. Few statutes could be drawn with the abstract precision that untempered logic might demand." Note, *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065, 1083.

[10] Appellees assert (Br. 42–46) that parents may discontinue their financial support of their children. That parents have in fact discontinued support is virtually impossible to establish during the course of the year, however, since tax dependency is based on a determination of annual support, much of which could be, and in many cases is, provided toward the close of the year. Furthermore, by denying food stamps in the "carry-over" year Congress has attempted to prevent parents, and children, from shifting the burden of support onto the federal government; in cases where the statute fails of this purpose, the deprivation of food stamps is only temporary and not absolute.

gram were not eliminated, political opposition to the program in its entirety could become overwhelming. See 116 Cong. Rec. 42021. Appellees here have not demonstrated that the statute has failed to achieve its major purpose, which they concede to be "praiseworthy" (Br. 31); nor have they established that the tax dependent amendment deprives substantial numbers of actually poor persons of needed food stamps. In fact, such deprivation would seem to be comparatively rare: Congress could reasonably assume that few truly impoverished households will contain a young adult who receives more than half his support from a relatively affluent parent.[11]

As Mr. Justice Stewart recently noted, "it has long been settled that the Equal Protection Clause is offended only by * * * classifications that are wholly arbitrary or capricious." *San Antonio Independent*

[11] Appellees complain (Br. 47–48) that the tax dependent amendment deprives all members of the household, and not merely the dependent, of food stamps. However, as we pointed out in our brief (at pp. 8–9), this argument is in fact directed against not the tax dependent amendment but rather the determination of eligibility on a household basis; and the determination of eligibility on a household basis is related to the statutory purpose of raising "levels of nutrition among low-income households." 7 U.S.C. 2011. (On the issue of what constitutes a "household", see *Knowles* v. *Butz*, No. C–72–1578 AJZ (N.D. Calif.), decided February 23, 1973. The government has determined that it will not appeal this decision, which holds that a "household" is an economic unit which may consist of fewer than all of the persons living together in a single dwelling unit. See 7 U.S.C. 2012(e). Thus whether persons living with the tax dependent will also be denied food stamp eligibility will depend upon a factual determination of whether they are part of the same "economic unit.")

School District v. *Rodriguez*, No. 71-1332, decided March 21, 1973 (concurring opinion, slip op., p. 2). Appellees here have not shown that Congress was acting arbitrarily or capriciously in concluding that the effect of the amendment would be to eliminate a significant program abuse without adversely affecting many persons in truly necessitous circumstances.[12]

3. Appellees contend (Br. 57–71) that the tax dependent amendment denies them procedural due process on the ground that they are prevented from establishing need despite the claims of tax dependency.[13] As we have pointed out in our brief (at p. 7, n. 4), this contention is nothing more than a restated equal protection argument in disguise.[14] Moreover, it is an argu-

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[12] At most, appellees arguably have shown that some actually needy persons have been denied food stamps by virtue of the tax dependent amendment. But the Equal Protection Clause permits "some sacrifice of equality and fairness * * * in order that the legal system [may] preserve flexibility to evolve new solutions to social problems." Note, *supra*, 82 Harv. L. Rev. at 1086.

[13] Appellees primarily rely on *Heiner* v. *Donnan*, 285 U.S. 312, *Hoeper* v. *Tax Commission*, 284 U.S. 206, and *Schlesinger* v. *Wisconsin*, 270 U.S. 230. In those cases the Court, following "[t]he *Allgeyer-Lochner-Adair-Coppage* constitutional doctrine" (*Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.*, 335 U.S. 525, 535), struck down various taxing statutes on due process grounds over the dissents of Justices Holmes, Brandeis, and Stone. Any continuing validity which those decisions may still retain presumably inheres only in the elements of rudimentary equal protection analysis implicit in the majority opinions.

[14] Appellees apparently recognize this fact by relying on *Dunn* v. *Blumstein*, 405 U.S. 330, *Reed* v. *Reed*, 404 U.S. 71, and *Carrington* v. *Rash*, 380 U.S. 89, in which this Court expressly applied an

ment which would in effect require Congress to match need and eligibility with mathematical nicety. Equal protection does not demand such precision. See *Dandridge* v. *Williams*, 397 U.S. 471, 485.

We further add that appellees' argument with respect to procedural due process is based on the erroneous premises that the basic eligibility criterion is "need" and that applicants should be entitled to demonstrate need notwithstanding their failure to satisfy other statutory requirements. But since "need" is not a concept which either by its nature or as a result of a long history of judicial consideration has a clearly ascertainable content, Congress wisely chose not to make "need" the statutory standard for food stamp eligibility. This decision reflected in part an awareness that the determination of "need" on a case-by-case basis would be administratively unworkable. Moreover, Congress was concerned not only with "need" but also with attempts by relatively affluent parents to shift the burden of supporting their young adult children onto the federal government. Consequently, Congress established, as the basic eligibility criteria, "household income and other financial resources, including both liquid and nonliquid assets," and the absence of any disqualifying tax depend-

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equal protection analysis. Appellees also cite *Stanley* v. *Illinois*, 405 U.S. 645, which seems ultimately to turn on considerations of equal protection; moreover, in holding that a father cannot be separated from his children without a hearing, the Court in *Stanley* gave great weight to the fact that "[t]he rights to conceive and to raise one's children * * * [are] '* * * far more precious * * * than property rights' " (405 U.S. at 651).

ent. 7 U.S.C. 2014(b).[15] A hearing is furnished with respect to an applicant-household's satisfaction of these requirements. Cf. *Goldberg* v. *Kelly*, 397 U.S. 254.

Congress and the states have properly imposed income and asset limitations on food stamp eligibility; as a consequence some genuinely needy households with, for example, extraordinary necessary expenditures are thereby excluded from eligibility, without an opportunity to establish at a hearing that they are in need. Administrative necessity requires the employment of such broad presumptions as are implicit in the income and asset limitations.

The tax dependent amendment simply provides an additional limitation on eligibility which can be seen to be closely analogous in part to an asset limitation: the possession of relatively affluent parents who provide substantial financial support is treated as an asset which is sufficiently important to render the recipient household ineligible for food stamp assistance. At the same time, the amendment purposely acts to deny food stamps in some cases regardless of need, in order to discourage prosperous parents from transferring the responsibility for their support onto the taxpayers generally. As we have shown here and in our brief, that statutory classification has a rational basis.

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[15] In short, Congress determined to provide food stamps not for the "needy" but rather for those who satisfy specific eligibility requirements. Appellees' due process argument is simply that they should be provided a hearing to determine "need" even though they have not met the eligibility conditions. But since Congress was not concerned with "need" to the exclusion of all other considerations, such a hearing would not further the legislative purpose. Thus *Bell* v. *Burson*, 402 U.S. 535, is inapposite here.

CONCLUSION

For the reasons stated above and our main brief, the judgment of the district court should be reversed.

Respectfully submitted.

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Solicitor General.
HARLINGTON WOOD, JR.,
Assistant Attorney General.
KEITH A. JONES,
Assistant to the Solicitor General.

APRIL 1973.

U.S. GOVERNMENT PRINTING OFFICE: 1973

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES DEPARTMENT OF AGRICULTURE ET AL. *v.* MURRY ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 72-848. Argued April 23, 1973—Decided June 25, 1973

Appellees challenge the constitutionality of § 5 (b) of the Food Stamp Act of 1964, as amended in 1971, providing that "[a]ny household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program . . . during the tax period such dependency is claimed and for a period of one year after the expiration of such tax period." This provision was generated by congressional concern over nonneedy households participating in the food stamp program, and abuses of the program by "college students" and "children of wealthy parents." The District Court held the provision unconstitutional, finding that it went far beyond the congressional goal, and operated inflexibly to deny stamps to households, containing no college students, that had established clear eligibility for stamps and remained in dire need, only because a member of the household 18 years or older is claimed by someone as a tax dependent. *Held:* The tax deduction taken for the benefit of the parent in a prior year is not a rational measure of the need of a different household with which the child of the tax-deducting parent lives, and the administration of the Act allows no hearing to show that the tax deduction is irrelevant to the need of the household. Section 5 (b) therefore violates due process. Pp. 3-6.

348 F. Supp. 242, affirmed.

DOUGLAS, J., delivered the opinion of the Court, in which BRENNAN, STEWART, WHITE, and MARSHALL, JJ., joined. STEWART and MARSHALL, JJ., filed concurring opinions. BLACKMUN, J., filed a dissenting opinion. REHNQUIST, J., filed a dissenting opinion, in which BURGER, C. J., and POWELL, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 72-848

United States Department of Agriculture et al., Appellants, *v.* Lula Mae Murry et al.	On Appeal from the United States District Court for the District of Columbia.

[June 25, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The Food Stamp Act, 7 U. S. C. § 2011 *et seq.* as amended in 1971, 84 Stat. 2045, has been applied to these appellees so as to lead the three-judge District Court to hold one provision of it unconstitutional. 348 F. Supp. 242. We noted probable jurisdiction. 407 U. S. —.

Appellee Murry has two sons and ten grandchildren in her household. Her monthly income is $57.50, which comes from her ex-husband as support for her sons. Her expenses far exceed her monthly income. By payment, however, of $11 she received $128 in food stamps. But she has now been denied food stamps because her ex-husband (who has remarried) had claimed her two sons and one grandchild as tax dependents in his 1971 income tax return. That claim, plus the fact that her eldest son is 19 years old, disqualified her household for food stamps under § 5 (b) of the Act.[1] Appellee Alderette is in com-

[1] Section 5 (b) of the Act provides in part: "Any household which includes a member who has reached his eighteenth birthday and *who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household*, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is

parable straits because her ex-husband claimed the five children, who live with their mother, as tax dependents and the oldest being 18 years old. Appellee Beavert's case is similar. Appellee Lee is the mother of five children, her entire income per month being $23 derived from public assistance. Her five children live with her. Her monthly bills are $249, of which $148 goes for food. Her husband is not a member of her household; he in fact deserted her and has supplied his family with no support. But he claimed the two oldest sons, ages 20 and 18, as tax dependents in his 1971 tax return, with

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claimed and for a period of one year after expiration of such tax period . . . ." (Emphasis added.)

The Regulations provide: " 'Dependent' for the purpose of § 271.3 (d) of this subchapter, means a person claimed as a dependent for Federal income tax purposes by a parent or guardian and living apart from the household of such parent or guardian." 7 CFR § 270.2 (q).

"Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for Federal income tax purposes by a member of a household which is not certified as being eligible to participate in the program during the tax period such dependency is claimed and for a period of 1 year after expiration of such tax period."

The relevant exemption provision in § 151 (e) of the Internal Revenue Code, 26 U. S. C. (Supp. I) § 151 (e), as amended reads:

"An exemption of $750 (shall be allowed) for each dependent (as defined in section 152)—

"(A) whose gross income for the calendar year in which the taxpayer begins is less than $750, or

"(B) who is a child of the taxpayer and who (i) has not attained the age of 19 at the close of the taxable year in which the taxable year of the taxpayer begins, or (ii) is a student . . . ." And the term "dependent" as meaning "any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer . . . : "(a) A son or daughter of the taxpayer . . . ." 26 U. S. C. § 152 (a).

the result that the wife's household was denied food stamps. Appellee Nevarez is in comparable straits.

Appellee Joe Valdez is 18 years old and married; and he and his wife have a child. He lives wholly on public assistance and applied for food stamps. His application was rejected because his father Ben claimed him as a tax dependent in his 1971 income tax return. Joe receives no support from Ben because Ben is in debt and unable to help support Joe.

Appellee Broderson is 18 and married to a 16-year-old wife and they have a small child. Their monthly income is $110 consisting of his wages at a service station. He cannot get food stamps because his father claimed him as a tax dependent. The father, however, gives him no support.

Appellee Schultz is 19 years old and she resides with a girl friend and the latter's two children. Appellee Schultz has no income of any kind but received food stamps for the household where she lived. Food stamps, however, were discontinued when her parents claimed her as a tax dependent but refused to give her any aid. She soon got married, but she and her husband were denied food stamps because her parents had claimed her for tax dependency.

These appellees brought a class action to enjoin the enforcement of the tax dependency provision of the Act; and, as noted, the three-judge court granted the relief.

Appellees in the *Murry* case are members of households that have been denied food stamp eligibility solely because the households contain persons 18 years or older who have been claimed as "dependents" for federal income tax purposes by taxpayers who are themselves ineligible for food stamp relief. Section 5 (b) makes the entire household of which a "tax dependent" was a member ineligible for food stamps for two years: (1) during

the tax year for which the dependency was claimed and (2) during the next 12 months. During these two periods of time § 5 (b) creates a conclusive presumption that the "tax dependent's" household is not needy and has access to nutritional adequacy.

The Administrator of the Food and Nutrition Service of the Department of Agriculture admitted in this case that:

> "[I]n the case of households which have initially been determined to be ineligible for participation in the program on the basis of tax dependency, there are no factual issues to be presented or challenged by the household at such a hearing, other than the issue of whether or not a member of the household has been claimed as a dependent child by a taxpayer who is not a member of a household eligible for food assistance (a fact the household, in most cases, already will have disclosed in its application). If a household states that it has such a tax dependent member, the household is, in conformity with the Food Stamp Act, the program regulations, and the instructions of FNS governing the program administration by State agencies, determined to be ineligible."

Thus in the administration of the Act a hearing is denied, not available as the dissent implies. As stated by the District Court the Act creates "an irrebutable presumption contrary to fact." 348 F. Supp., at 243. Moreover, an income tax return is filed, say in April 1973, for the year 1972. When the dependency deduction is filed, the year for which the dependency claim was made has already passed. Therefore the disqualification for food stamps cannot apply to 1972 but only to 1973.

The tax dependency provision was generated by congressional concern about nonneedy households partici-

pating in the Food Stamp program.[2] The legislative history reflects a concern about abuses of the program by "college students; children of wealthy parents." [3] But as the District Court said the Act goes far beyond that goal and its operation is inflexible. "Households containing no college student, that had established clear eligibility for Food Stamps and which still remain in dire need and otherwise eligible are now denied stamps if it appears that a household member 18 years or older is claimed by someone as a tax dependent." 348 F. Supp., at 243.

Tax dependency in a prior year seems to have no relation to the "need" of the dependent in the following year. It doubtless is much easier from the administrative point of view to have a simple tax "dependency" test that will automatically—without hearing, without witnesses, without findings of fact—terminate a household's claim for eligibility for food stamps. Yet as we recently stated in *Stanley* v. *Illinois*, 405 U. S. 645, 656:

> ". . . it may be argued that unmarried fathers are so seldom fit that Illinois need not undergo the administrative inconvenience of inquiry in any case, including Stanley's. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed

[2] Household participation is based on current circumstances, not past needs. Food stamp certifications for households on public assistance coincide with their welfare certification periods. 7 CFR §§ 4 (a) (4) (ii) and 271.4 (a) (1). For nonpublic assistance households, certification periods last normally only three months. 7 CFR § 271.4 (a) (4) (iii). Longer certification periods are provided only "if there is little likelihood of change in household status." 7 CFR §§ 271.4 (a) (4) (iii), (b), (c), and (d).

[3] 111 Cong. Rec. 41979.

and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizen from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones."

We have difficulty in concluding that it is rational to assume that a child is not indigent this year because the parent declared the child as a dependent in his tax return for the prior year. But even on that assumption our problem is not at an end. Under the Act the issue is not the indigency of the child but the indigency of a different household with which the child happens to be living. Members of that different household are denied Food Stamps if one of its present members was used as a tax deduction in the past year by his parents even though the remaining members have no relation to the parent who used the tax deduction, even though they are completely destitute and even though they are one, or 10 or 20 in number. We conclude that the deduction taken for the benefit of the parent in the prior year is not a rational measure of the need of a different household with whom the child of the tax deducting parent lives and rests on an irrebuttable presumption often contrary to fact. It therefore lacks critical ingredients of due process found wanting in *Vlandis* v. *Kline*, 410 U. S. —, —; *Stanley* v. *Illinois*, *supra;* and *Bell* v. *Burson*, 402 U. S. 535.

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 72-848

United States Department of Agriculture et al., Appellants, *v.* Lula Mae Murry et al.	On Appeal from the United States District Court for the District of Columbia.

[June 25, 1973]

MR. JUSTICE STEWART, concurring.

The food stamp program was established in 1964 for the twin purposes of promoting the agricultural economy and alleviating hunger and malnutrition among the needy members of "the other America." 7 U. S. C. § 2011. Under this program, currently needy households whose members comply with a work requirement, 7 U. S. C. §§ 2014 (b), (c), are entitled to purchase enough food stamps to provide those households with nutritionally adequate diets. In 1971, Congress became concerned with the possibility that non-needy households were receiving food stamps, and its response was the enactment of Pub. L. 91-671. While the curbing of abuses in the administration of a government program is assuredly a legitimate purpose, that statute has given rise to constitutional questions in the present case and its companion, *United States Department of Agriculture* v. *Moreno, ante.*

The challenged provision in the present case is § 5 (b) of the Food Stamp Act, as amended, 7 U. S. C. §2014 (b), 84 Stat. 2049. That section renders ineligible for food stamps any household that includes a member over 18 years of age who has been claimed as a tax dependent by a taxpayer who is not himself eligible for the stamps. What little legislative history there is suggests that the

sole reason for enactment of this section was to prevent the receipt of food stamps by the sons and daughters of more affluent families. 116 Cong. Rec. 41979, 41981, 41993, 42021; cf. *Dandridge* v. *Williams*, 397 U. S. 471, 483–484.

Rather than requiring an individualized determination that a particular household linked to a relatively more affluent household by a claimed tax dependency was not in fact needy, Congress chose instead to utilize a conclusive presumption. The simple fact that a *household member* has been claimed as a tax dependent by a non-indigent taxpayer results in the complete termination of benefits for that *entire household* in the relevant tax period and in the subsequent 12 months as well. 7 U. S. C. 2014 (b). It matters not whether that dependency claim was fraudulent, what the amount of support from the non-indigent taxpayer actually was,[1] whether that support was still available at the time the welfare officials learned of it, or even whether the claimed dependent was still living in the household.

This Court recently declared unconstitutional, under the Due Process Clause of the Fourteenth Amendment, a Connecticut statute establishing a permanent, conclusive presumption of nonresidency for purposes of qualifying

[1] Even if the amount of support received from the taxpayer leaves the household with income below the income eligibility standards, the statute under consideration would terminate benefits. A 5-person household, for example, might receive $120 in public assistance each month, plus $121 from a divorced non-indigent spouse. If that household had within it a child who was age 18 or older, and if the spouse claimed that child as a dependent, the household would be ineligible for food stamps. Yet in this hypothetical situation, the household's monthly income would be $241, whereas under the Department of Agriculture's own income standards a household of five can earn up to $440 per month without being disqualified for food stamps. 37 Fed. Reg. 7724. The opinion of the Court points out how totally arbitrary the challenged statute is in operation.

for reduced tuition rates at a state university. *Vlandis* v. *Kline*, — U. S. —. As we said in that case:

> "In sum, since Connecticut purports to be concerned with residency in allocating the rates for tuition and fees at its university system, it is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination. Rather, standards of due process require that the State allow such an individual the opportunity to present evidence showing that he is a bona fide resident entitled to the in-state rates." — U. S., at —.

See also *Morrissey* v. *Brewer*, 408 U. S. 741; *Stanley* v. *Illinois*, 405 U. S. 645; *Bell* v. *Burson*, 402 U. S. 535.

Similarly, I think, the conclusive presumption that led to the termination of the appellees' benefits without any opportunity for them to prove present need denied them due process of law.[2] Accordingly, I concur in the opinion and judgment of the Court.

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[2] The Congress has alternative means available to it by which its purpose can be achieved. The Food Stamp Act, as amended, already provides that households must demonstrate present neediness to qualify, 7 U. S. C. § 2014 (b), and that its members must under certain circumstances accept available employment, *id.*, § 2014 (c). There is no reason that enforcement of these provisions cannot be strengthened if the Congress believes that fraud is taking place. There are already criminal penalties in effect for fraudulent acquisition, use, or transfer of food stamps. 7 U. S. C. §§ 2023 (b), (c).

SUPREME COURT OF THE UNITED STATES

No. 72-848

United States Department of Agriculture et al., Appellants, v. Lula Mae Murry et al.	On Appeal from the United States District Court for the District of Columbia.

[June 25, 1973]

MR. JUSTICE MARSHALL, concurring.

I join the opinion of the Court. I wish to state briefly what I believe are the analytic underpinnings of that opinion. One aspect of fundamental fairness, guaranteed by the Due Process Clause of the Fifth Amendment, is that individuals similarly situated must receive the same treatment by the Government. As Mr. Justice Jackson put it, the Government "must exercise [its] powers so as not to discriminate between [its] inhabitants except upon some reasonable differentiation fairly related to the object of the regulation." *Railway Express Agency* v. *New York*, 336 U. S. 106, 112 (1949) (concurring opinion). It is a corollary of this requirement that, in order to determine whether persons are indeed similarly situated, "such procedural protections as the particular situation demands" must be provided. *Morrissey* v. *Brewer*, 408 U. S. 471, 481 (1972). Specifically, we must decide whether, considering the private interest affected and the governmental interest sought to be advanced, a hearing must be provided to one who claims that the application of some general provision of the law aimed at certain abuses will not in fact lower the incidence of those abuses but will instead needlessly harm him. Cf. *Reed* v. *Reed*, 404 U. S. 71 (1971); *Vlandis* v. *Kline*, *ante*. In short, where the private interests affected are very important

and the governmental interest can be promoted without much difficulty by a well-designed hearing procedure, the Due Process Clause requires the Government to act on an individualized basis, with general propositions serving only as rebuttable presumptions or other burden-shifting devices. That, I think, is the import of *Stanley* v. *Illinois*, 405 U. S. 645 (1972).

Is this, then, such a case? Appellant argues that Congress could rationally have thought that persons claimed as tax dependents by a taxpayer himself not a member of an eligible household in one year could, during that year and the succeeding one, probably receive sufficient funds from the taxpayer to offset their need for food stamps. If those persons received food stamps, they would be denying to the truly needy some of the limited benefits Congress has chosen to make available. The statute, on this view, is aimed at preventing abuse of the program by persons who do not need the benefits Congress has provided. Even if, as appellant urges, the statute is interpreted to make ineligible for food stamps only those persons validly claimed as tax dependents, see Reply Brief for Appellant, at 2–3, I do not think that Congress adopted a method for preventing abuse that is reasonably calculated to eliminate only those who abuse the program. In particular, it could not be fairly concluded that, because *one* member of the household had received half his support from a parent, the *entire* household's need for assistance in purchasing food could be offset by outside contributions.

It is, of course, quite simple for Congress to provide an administrative mechanism to guarantee that abusers of the program were eliminated from it. All that is needed is some way for a person whose household would otherwise be ineligible for food stamps because of this statute to show that the support presently available from the person claiming a member of the household as a tax

dependent does not in fact offset the loss of benefits* Reasonable rules stating what a claimant must show before receiving a hearing on the question could easily be devised. We deal here with a general rule that may seriously affect the ability of persons genuinely in need to provide an adequate diet for their households. In the face of readily available alternatives that might prevent abuse of the program, Congress did not choose a method of reducing abuses that was "fairly related to the object of the regulation," by enacting the statute challenged in this case.

This analysis of course combines elements traditionally invoked in what are usually treated as distinct classes of cases, involving due process and equal protection. But the elements of fairness should not be so rigidly cabined. Sometimes fairness will require a hearing to determine whether a statutory classification will advance the legislature's purposes in a particular case so that the classification can properly be used only as a burden shifting device, while at other times the fact that a litigant falls within the classification will be enough to justify its application. There is no reason, I believe, to categorize inflexibly the rudiments of fairness. Instead, I believe that we must assess the public and private interests affected by a statutory classification and then decide in each instance whether individualized determination is required or categorical treatment is permitted by the Constitution.

*Such a mechanism must be made available, on the interpretation of the statute advanced by appellant, to persons who contend that they were not validly claimed as dependents.

SUPREME COURT OF THE UNITED STATES

No. 72-848

United States Department of Agriculture et al., Appellants, v. Lula Mae Murry et al. | On Appeal from the United States District Court for the District of Columbia.

[June 25, 1973]

MR. JUSTICE BLACKMUN, dissenting.

Section 5 (b) of the Food Stamp Act, which the Court today holds unconstitutional, is not happily drafted and surely is not the kind of statute that attracts sympathetic review. Its purposes, however, are conceded to be laudatory. And, indeed, they are, for the statute seeks to prevent widespread abuse of the federal food stamp program by nonindigents and college students, with consequent denial of the full benefit of the program to those seriously in need of assistance.

The Court, however, invalidates § 5 (b) for, apparently, two reasons. The first is that tax dependency in one calendar year is tied to the subject's lack of need in the following year, and this, it is said, has no rational connection. The second, although it may not be clearly articulated, is that all that is needed to disqualify a household is the presence in it of a person over 18 who is claimed as a dependent for federal income tax purposes by someone outside the household. That this is a reason is quite apparent from the Court's special emphasis on the claims of dependency said to have been asserted by the father or parents of appellees Valdez, Broderson, and Schultz, even though the parent or parents, according to affidavits, gave "no support" or refused to give "any aid," to use the Court's words, *ante*, p. 3.

For me, neither reason is persuasive. As I read § 5 (b) of the Act, see the Court's footnote 1, *ante*, p. 1, the years of ineligibility for food stamps are "the tax period such dependency is claimed" and the year that follows. They are not the latter year and the one subsequent thereto, as the Court seems to indicate. I confess that there must be some practical awkwardness in relating the food stamp year to the tax dependency year, for one often cannot know that he is being claimed as a tax dependent for a given year until the claimant files his income tax return for that year some time after its close. Despite this fact, the statute, for me, is clear and, at least, acceptable, and I would not rewrite it on a pragmatic basis, as, I think, the Court has done. Furthermore, the "year after" provision is not without rational basis, for Congress, in allocating limited resources, has determined that by this means it recoups in the later year the loss sustained in the earlier year when food stamps were improperly claimed.

My second concern centers in the meaning of the words, "who is claimed as a dependent child for Federal income tax purposes," in § 5 (b) of the Act. I cannot believe that the mere fact of claiming is sufficient or that that is what Congress intended. It seems obvious to me that "claimed" in this context has only one meaning, that is, *properly* claimed for income tax purposes, and not the mere assertion of dependency in the return. This would be the sensible construction of the statute. It is obvious and clear, from the Court's description of the Valdez, Broderson, and Schultz situations, on page 3 of its opinion, that the parent or parents who claimed those appellees as income tax dependents were not at all entitled to make those claims. They clearly did not satisfy the requirements of § 151 (e) of the Internal Revenue Code of 1954, 26 U. S. C. § 151 (e). Valdez' problem is with his father, not with the food stamp program, if

the facts the Court states are accurate. The same is true of Broderson. The same is true of Schultz.

Each of these aspects, which the Court chooses not to analyze and prefers, instead, to resolve by convenient nullification of the statute, could be handled by an appropriate hearing directed to the ascertainment of the actual facts. In that hearing it may be shown whether Joe Valdez, in fact, "receives no support from Ben." If this be true, Joe should not automatically be ineligible for the program, and Ben's improper claim of Joe as an income tax dependent should have no food stamp consequence whatsoever. So it would be with appellees Broderson and Schultz. The same may be true as to the remaining appellees with respect to whom claims of dependency status, on the affidavits filed, are at least questionable.

I, therefore, would vacate the judgment of the District Court and remand the case for a hearing directed to the development of the underlying facts in the light of § 5 (b) of the Food Stamp Act and of § 151 (e) of the 1954 Internal Revenue Code, and for the entry of a new judgment in the light of those facts as so ascertained.

SUPREME COURT OF THE UNITED STATES

No. 72–848

United States Department of Agriculture et al., Appellants, *v.* Lula Mae Murry et al.	On Appeal from the United States District Court for the District of Columbia.

[June 25, 1973]

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and MR. JUSTICE POWELL concur, dissenting.

Appellees challenge on constitutional grounds a section of the most recent congressional revision of the Food Stamp Act, 7 U. S. C. § 2011 *et seq.*, whereby households containing persons 18 years or older who have been claimed as "dependents" for income tax purposes are made ineligible to receive food stamps. The Court's opinion sustains this challenge. Referring to what it conceives to be the legislative aim in enacting such a limitation, "[a] concern about abuses of the program by 'college students; children of wealthy parents,'" the opinion states that "the Act goes far beyond that goal and its operation is inflexible" *ante*, p. 5.

Notions that in dispensing public funds to the needy Congress may not impose limitations which "go beyond the goal" of Congress, or may not be "inflexible," have not heretofore been thought to be embodied in the Constitution. In *Dandridge* v. *Williams*, 397 U. S. 471 (1970), the Court rejected this approach in an area of welfare legislation that is indistinguishable from the food stamp program here involved. There the District Court, in the words of this Court,

> "while apparently recognizing the validity of at least some of these State concerns, nonetheless held

that the regulation 'is invalid on its face for overreaching,' 297 F. Supp., at 468—that it violates the Equal Protection Clause '[b]ecause it cuts too broad a swath on an indiscriminate basis as applied to the entire group of AFDC eligibles to which it purports to apply. . . .'" 397 U. S., at 484 .

Applying the Equal Protection Clause of the Fourteenth Amendment to state action, the Court reversed the District Court and held:

". . . [T]he concept of 'overreaching' has no place in this case. For here we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, and claimed to violate the Fourteenth Amendment only because the regulation results in some disparity in grants of welfare payments to the largest AFDC families. For this Court to approve the invalidation of state economic or social regulation as 'overreaching' would be far too reminiscent of an era when the Court thought the Fourteenth Amendment gave it power to strike down state laws 'because they may be unwise, improvident, or out of harmony with a particular school of thought. . . .'

"In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78." 397 U. S., at 484–485.

In placing the limitations on the availability of food stamps which are involved in this case, Congress has not in any reasoned sense of that word employed a con-

clusive presumption as stated by the majority, *ante*, p. 4, and MR. JUSTICE STEWART in his concurring opinion, *ante*, pp. 2–3; it has simply made a legislative decision that certain abuses which it conceived to exist in the program as previously administered were of sufficient seriousness to warrant the substantive limitation which it enacted. There is a qualitative difference between, on the one hand, holding unconstitutional on procedural due process grounds presumptions which conclude factual inquiries without a hearing on such questions as fault, *Bell* v. *Burson*, 402 U. S. 535 (1971), the fitness of an unwed father to be a parent, *Stanley* v. *Illinois*, 405 U. S. 645 (1972), or, accepting the majority's characterization in *Vlandis* v. *Kline*, — U. S. — (1973), residency, and on the other hand holding unconstitutional a duly enacted prophylactic limitation on the dispensation of funds which is designed to cure systemic abuses. Cf. *Mourning* v. *Family Publications Service, Inc.*, — U. S. — (1973); *Ginsberg* v. *New York*, 390 U. S. 629, 643 (1968).

Thus, we deal not with the law of evidence, but with the extent to which the Fifth Amendment permits this Court to invalidate such a determination by Congress. In *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 487–488 (1955), the Court said:

> "But the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it."

Accord, *Dandridge* v. *Williams*, *supra*; *Ferguson* v. *Skrupa*, 372 U. S. 726 (1963); *Flemming* v. *Nestor*, 363 U. S. 603, 611–612 (1960).

The majority concludes that a "deduction taken for the benefit of the parent in the prior year is not a rational measure of the need of a different household with whom

the child of the tax deducting parent lives." *Ante*, p. 6. But judged by the standards of the foregoing cases, the challenged provision of the Food Stamp Act has a legitimate purpose and cannot be said to lack any rational basis. Section 5 (b) declares ineligible for food stamps "[a]ny household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household." Thus, in order to disqualify a household for food stamps, the taxpayer claiming one of its members as a dependent must both provide over half of the dependent's support and must himself be a member of a household with an income large enough to disqualify that household for food stamps. These characteristics indicate that the taxpayer is both willing and able to provide his dependent with a significant amount of support. To be sure, there may be no perfect correlation between the fact that the taxpayer is part of a household which has income exceeding food stamp eligibility standards and his provision of enough support to raise his dependent's household above such standards. But there is some correlation, and the provision is, therefore, not irrational. *Dandridge* v. *Williams, supra.**

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*The Court's opinion makes much of the facts that there may be no relationship between the tax dependent's parent and the remaining members of the household, that they may be completely destitute and that they may be one or 10 or 20. *Ante*, p. 6. Section 3(e) of the Food Stamp Act, 7 U. S. C. § 2012 (e), provides in relevant part:

"The term 'household' shall mean a group of . . . individuals . . . who . . . are living as one economic unit. . . ."

In its instructions to the state agencies administering the Food Stamp Program, the Department of Agriculture's Food and Nutrition Service defines "economic unit" as meaning that "the common living expenses are shared from the income and resources of all members and that the basic needs of all members are provided for without regard to their ability or willingness to contribute." (Reply

Nor is § 5 (b) deprived of a rational basis because disqualification of the household extends one year beyond the year in which the dependency deduction is claimed. Since income tax returns are not filed until after the termination of the tax year, the carry-over provision is the only practical means of enforcing the congressional purpose unless Congress were to establish an administrative adjudication procedure wholly independent of the existing tax collection structure. Such an alternative system would doubtless have its own delays, inefficiencies, and inequities. Under these circumstances we cannot say that Congress acted irrationally in judging a person's need in one year by whether he was claimed as a tax dependent in the previous year.

Finally, the fact that the statute as presently administered may operate to deny food stamps on the basis of fraudulent as well as lawful dependency deduction claims does not, as suggested by the three-judge District Court, 348 F. Supp. 242, 243 (DC 1972), render it unconstitutional. A false dependency claim subjects the taxpayer to both civil and criminal penalties, and Congress may reasonably proceed on the assumption that taxpayers will obey the law.

The prior holdings of the Court convince me that this limitation which Congress has placed on the availability of food stamps does not violate the Due Process Clause of the Fifth Amendment and I therefore dissent from the Court's affirmance of the judgment of the District Court.

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brief for appellants in 72–534, *United States Dep't of Agriculture, et al.* v. *Moreno, et al.*, p. 9, n. 19.)

The majority does not question that Congress could rationally so choose to dispense welfare benefits to "economic units" rather than to individuals. *Dandridge* v. *Williams, supra.* Since the resources of the household member claimed as a tax dependent are by definition available to the entire household, it is rational to disqualify such units containing ineligible tax dependents.